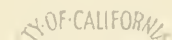
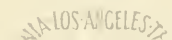
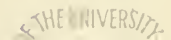


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THE PROVINCE OF THE STATE

THE PROVINCE OF THE STATE

BY

SIR ROLAND K. WILSON, BART.

AUTHOR OF

"A SHORT HISTORY OF MODERN ENGLISH LAW," "AN ANNOTATED
EDITION OF SIR G. C. LEWIS'S USE AND ABUSE OF POLITICAL TERMS,"
"AN INTRODUCTION TO THE STUDY OF ANGLO-MUHAMMADAN LAW,"
"A DIGEST OF ANGLO-MUHAMMADAN LAW."

*Quel est le service que la puissance publique rend au public ?
Il en est un principal, la protection de la communauté contre
l'étranger et des particuliers les uns contre les autres.*

TAINE.



LONDON
P. S. KING & SON
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P R E F A C E.



THIRTY-SIX years ago I contributed to a series of historical handbooks a sort of skeleton of the history of modern English Law from the time of Blackstone to 1874, taking for my motto a remark of Sir Henry Maine to the effect that he did not know a single law reform effected since Bentham's day which could not be traced to his influence. Six years ago Professor A. V. Dicey, in the Preface to his valuable book on "Law and Public Opinion in England," did me the great honour of referring to my little book as having first given him a clear view of the relation between the Blackstonian era of optimistic stagnation and the Benthamite era of scientific law reform. He went on to observe that, in 1875, the progress of Socialism, or Collectivism, had hardly attracted notice, so that I could not describe its effects, and made the highly flattering suggestion that I might render a public service by bringing my treatise up to date. I have not, so far, seen my way to doing this, being already engaged on a task that interested me still more, namely, the endeavour to settle to my own satisfaction the

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principles on which one ought to judge that trend of modern legislation which Professor Dicey has himself so skilfully delineated. He calls it, and I have generally been obliged to call it, for want of a better term, Socialist or Collectivist ; but I have never been quite satisfied with either term. The French word which I should like to naturalise is “*Étatisme*.” I have seen an excellent little pamphlet by the late Admiral Reveillère, entitled “*Contre l’Étatisme*.” But “statism” in English is an obsolete word once used to denote what we now call Erastianism, while “statist,” Milton’s equivalent for the modern “statesman,” is now the title of a weekly journal of commerce and practical finance, being apparently regarded as an abbreviated form of “statistician.”

The terms Socialism and Collectivism have reference, primarily at least, to the attitude of the State towards the institution of private property, whereas the tendency which both Professor Dicey and myself have in our minds is displayed quite as much in the regulation of personal conduct as in nationalising or municipalising industry. “Paternalism” would better express this part of our meaning, as indicating the kind of statesmanship which would treat large sections of the adult population as children incapable of managing their own affairs, but is otherwise inadequate. “Over-legislation” is the phrase chiefly used by Herbert Spencer and by the

Liberty and Property Defence League, but the mere bulk of the statute-book tells us nothing whatever as to whether or not the State has been meddling with matters outside its proper province. I should welcome a thousand-page volume as the fruit of a single session, if it included a comprehensive measure of Church disestablishment or of democratic parliamentary reform, or if it meant the embodiment, in a well-drawn Code, of the cream of a dozen thick volumes of Law Reports ; and, on the other hand, I can easily imagine the whole programme of Marxian Socialism effectuated by a few sections creating a Ministry of Labour, and leaving all details to be settled by departmental action.

Equally difficult is it to find a satisfactory term for the opposite of “*Étatisme*.” In practice “*Individualism*” holds the field as the term most widely used and most generally understood ; but that is saying very little, for it is constantly misunderstood—and no wonder. It is doubtless intended, by most of those who choose it for their watchword, to denote “*respect for the individuality of others*,” implying a desire to make the State an instrument for minimising coercion ; but it is liable to be mistaken, quite naturally, by those unacquainted with its history, either for a philosophy of “*Egoistic Hedonism*,” or for the cult of the Superman according to Nietzsche, or for some theory of the superiority of isolated to

corporate industry. If, again, we elect to describe the one tendency as "Coercionist" and its opposite as "Voluntaryist" or "Libertarian," we shall come somewhat nearer to marking the contrast to which I for one attach the greatest importance, but we shall still have a sense of inadequacy. We shall succeed in emphasising the point that our quarrel is not at all with the co-operative spirit, or with the Socialism of Robert Owen and his like, but only with unnecessary substitutions of compulsory for voluntary forms of co-operation. But we shall still remain exposed to the imputation of Anarchism, or (in Huxley's phrase) "Administrative Nihilism," unless we show by some qualifying adjective that we recognise the necessity for some coercion, and indicate some test by which to distinguish the necessary from the unnecessary. The happy discoverer of a new pair of opposed terms which will satisfy all these requirements will lay us all under a heavy obligation; but meanwhile it may console us to remember the late Laureate's advice, not to deal in watchwords overmuch, and we may proceed quietly with our task of defining and developing that conception of State functions which seems to us *a priori* the most reasonable, in hopes of gradually learning more about its implications and its limitations, as we confront it with one after another of our actually existing institutions.

What books have chiefly influenced my thinking, either by way of attraction or of repulsion, will sufficiently appear from the work itself, and especially from Chapters XIII., XIV., and XV. Its two principal inspirers are undoubtedly Jeremy Bentham and the Herbert Spencer of "Social Statics" (not the Synthetic Philosopher of 1893). But unless I were able to claim, as I do claim, to be

"Nullius addictus jurare in verba magistri,"

and to have done my best to keep abreast of the vast and turbid current of modern sociology, it ought not to have been published, and would not deserve to be read.

Of one booklet, which did not come under my notice till after going to press, something may here be said. "The Socialist Movement," by Mr. Ramsay Macdonald, M.P.,¹ is the latest of innumerable attempts "to give an accurate statement of what Socialism means, and what the purpose of Socialism is," and it carries weight from the position of its author among the recognised leaders of the Labour Party in Parliament. The form of Collectivism advocated is practically identical with that of Mr. J. A. Hobson, described and discussed in Chapters XII. and XIV. of this

¹ Williams & Norgate, Home University Library Series. The date of publication is not given, but I think it is 1911.

work ; but there is also some quasi-historical matter which, though neither new nor true, bids fair to become established for truth by force of repetition.

The legend dinned continually into our ears from most Socialist and some non-Socialist platforms is that there prevailed at one time in England a particular way of regarding State functions, sometimes called Benthamism, sometimes Philosophic Radicalism, sometimes Manchesterism, but more often Individualism, which was accepted and acted on by the Legislature ; and that this experiment, having been found unsatisfactory after a long and fair trial, is now being more and more abandoned and discredited in favour of the alternative policy called Socialism or Collectivism. Mr. Macdonald adopts this legend, and is bold enough to fix the period of the alleged experiment, with some degree of precision, as the two middle quarters of the nineteenth century. It was then, according to him (p. 26), that “the pendulum swung far towards the extreme of individual liberty of the atomic or mechanical¹ sort. The community, as an organic unity through which individual liberty has to be expressed, became a shadow.

¹ These adjectives are not very illuminating. “Atomic” is tautological, being simply the Greek equivalent of “individual,” and we learn from a footnote on p. 28 (what we could hardly have guessed), that the word “mechanical,” as applied to individualism, is synonymous with “anarchist !”

The oscillation passed from the hampering organisation of feudalism to the desolating anarchy of *laissez faire*."

I for my part make bold to affirm that the whole story is a myth, which has only acquired plausibility through a confusion between the teaching of philosophers and the action of statesmen. What actually happened was this :—

Bentham spent a long life in pressing upon his countrymen (and upon foreigners also when he got a chance) a comprehensive scheme of law reform, based on the general principle of seeking the greatest happiness of the greatest number (individual interests being taken to be the only real interests), and more specifically on the presumption that some adults will, for the most part, be able to look after their own interests, if only they are effectually protected against violence and fraud ; not (as is often erroneously stated) on the presumption that each individual in pursuing his own objects is necessarily serving the general interest. The failure of English law, as he knew it, to afford this protection to either rich or poor with reasonable certainty or promptitude, but more especially its practical denial of justice to the poor, was the object of his constant denunciation, and he worked out, in minutest detail, the changes required in order to convert the existing chaos into a rational system. Only quite late in life, when experience had taught him

the hopelessness of trying to convert the then governing classes, did he turn his attention to political reform ; but when he did, he went to work with his usual uncompromising thoroughness, and drafted a Constitutional Code on the most strictly democratic lines, not excepting votes for women. Of legislation on the lines of his teaching he lived to see scarcely anything ; but the year of his death (1832) was the year of the first Parliamentary Reform Bill, and during the next forty or fifty years the influence of his conscious or unconscious disciples, or of kindred minds independently inspired, made itself strongly and beneficently felt in certain departments of law, so that the dictum of Sir Henry Maine may be accepted as substantially true. But to say that whatever was done in the way of law reform is traceable to Benthamite influence is a very different thing from saying that Benthamism, or that any form of "Philosophic Radicalism," was, during any part of that period, generally triumphant. The successes painfully achieved, bit by bit, do not amount, all told, even now, to more than a small fraction of the entire Benthamite programme ; while, on the other hand, it would be easy to draw up a list of measures passed during the so-called half-century of Individualism which breathe the very opposite spirit to that of either Bentham, or Cobden, or Herbert Spencer.

It is not, of course, possible to prove, what

nevertheless I am inclined to believe, that if the ideas of Bentham, or those of the Early Victorian Radicals, had been at any time really dominant in Parliament, the general prosperity and contentment would before this have cut the ground from under the feet of our Socialist friends, and that we should have heard very little of either Marxian or Fabian Collectivism. What is certain however is, that not failure after a fair trial, but failure to get a fair trial, discredited the old Radicalism in the eyes of practical politicians, and left the field clear for the struggle still going on between the plutocratic and the democratic forms of "Étatisme."

Mr. Macdonald's antithesis between "the hampering organisation of feudalism" and "the desolating anarchy of *laissez faire*" is according to my reading of English history a false one. Surely the very best times of feudalism present a scene of desolating anarchy in comparison with the worst of the last century. It is an anachronism to speak (as at p. 56) of the medieval king as the embodiment of the State, for there was no State in the modern sense of the term before the Elizabethan period, if even then. From top to bottom of the so-called organisation of feudalism political and proprietary rights—dominion over persons and dominion over things—were inextricably confused, and the typical social bond of the period was the ultra-individualistic one of

contract between lord and vassal for personal protection in return for personal allegiance. The evils connected with the rise of the new industrial system were not caused by any unduly narrow conception of the province of the State, but were due partly to the inefficient way in which the then government discharged its universally acknowledged functions of justice and police, and partly to its assumption of functions outside its proper province, and its jealous, dog-in-the-manger attitude towards all voluntary effort and voluntary association in those spheres. If it had properly fulfilled its justice-enforcing function, the overworking of children in mines and factories would have been restrained by action directed rather against the parents than against the employers ; and, on the other hand, if it had ceased to maintain a privileged National Church, and to place all sorts of difficulties in the way of the heterodox teacher, voluntary effort would have had a chance of covering the land with wholesomely varied types of schools, of which the parents, when duly awakened to their legal responsibilities, would have been only too glad to avail themselves, so that the question of universal State-provided education need never have arisen.

Not only books, but public events freshly illustrating our subject have been crowding in

upon us since the body of this work went to press. We have had election petitions which would have supplied even more telling illustrations than that given at p. 248 of the uglier aspects of modern political competition. We have had a strong light directed on the working of the Post Office monopoly by the Postmaster-General's history of the dealings of his department with the telephone industry, as given to the House of Commons on 21st June, and *The Times* comments thereon (22nd June). And we have also had, what is of still greater interest to us, the second reading of Mr. Lloyd George's National Insurance Bill, which exemplifies to perfection that theory of State function which is most directly opposed to ours, but to which both political parties now stand equally committed. If it becomes law in anything like its present shape, or indeed in any shape not involving a complete abandonment of its principle, and if the result corresponds in any degree to the sanguine anticipations of its author, it will go far towards disproving my thesis. On the other hand, should the consequences turn out to be as disastrous as I am naturally disposed to anticipate, the vital question will then be whether the lesson has come too late or just in time to stimulate a reaction against State meddling.

The plainly avowed principle of the measure is to bring under State tutelage many millions

of sane, self-supporting adults, and to take out of their hands the spending or saving of their own earnings. But, by way of a bribe to induce the wage-earning class to acquiesce in this encroachment on their liberty, their compulsory thrift is to be supplemented by compulsory exactions from their employers, as such, and from the general body of taxpayers, among whom both employers and employed are, of course, included. I am hardly economist enough to pronounce how far this threefold division of the burden is real, and how far illusory ; but one veteran teacher of that science has already expressed the opinion that the ultimate incidence of at least eight-ninths of the cost of the pseudo-millennium will be on the wage-earners themselves.¹ The Bill at the same time pours a heavy douche of cold water on the spirit of voluntary mutual aid by practically converting the great Friendly Societies into agents of the central government ; while it makes another long stride towards the consummation (deprecated in my eleventh chapter) of an all-absorbing public medical service, than which nothing more fatal

¹ See *The Individualist* for May to June 1911, p. 34. *The Nation*, on the other hand, opines that the whole burden will be shifted about (in the manner described at p. 204 of this work), until it hits the possessions of "unproductive surplus." But what if the weight of taxation has already exhausted all unproductive surpluses, and left nothing taxable except the very springs of industry ?

to the progress of true medical science can well be conceived.

The proverbial bull in a china shop is the aptest simile that occurs to me for the effect already produced on a vast and delicate complexus of interests by the mere introduction and second reading. We hear cries of distress from labour members, employers, doctors, nurses, owners of house property, and taxpayers, each party thinking, or affecting to think, that its own special grievance can be easily remedied without inflicting additional injury on the other parties, and without prejudice to the principle of National Insurance, which for the most part they profess to approve. Readers of this work will not be long in discovering that the principle of National Insurance, whether contributory or State-provided, or partly one and partly the other, is unreservedly condemned by the whole tenor of our argument. It is entirely in harmony with that drill-sergeant conception of society which seems to find favour in Germany ; but it is no less manifestly inconsistent with our policy of minimising coercion, and impossible to connect in any practical way with the business of a justice-enforcing association.

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THE PROVINCE OF THE STATE.

PART I.

THE JURISTIC THEORY OF STATE FUNCTION EXPOUNDED AND APPLIED.

CHAPTER I.

THE STATE AS A JUSTICE-ENFORCING ASSOCIATION.

“Justice is the end of government.”—From the *Federalist*,
as quoted by Bentham, “Works,” vol. ix. p. 123.

THOMAS HOBBS of Malmesbury, the author of “Leviathan,” has perhaps as good a claim as any one to be regarded as the founder of English political philosophy. To him, at all events, we owe the first vivid pictorial representation of the State conceived as an artificial person. The Leviathan of his frontispiece is the half-figure of a giant, with a sword in one hand and a crosier in the other, whose body is seen on closer inspection to be composed of a number of little men. This “Mortal God, to whom we owe, under the Immortal God, our peace and defence,” is described as “One Person, of whose acts a number, by mutual covenants

one with another, have made themselves every one the author, to the end that he shall use the strength and means of them all, as he shall think expedient, for peace and common defence." By "Person" is here meant, not an actual flesh-and-blood individual, but a representative character predicated of, or borne by, an individual or assemblage of individuals. "He that carrieth this Person is called 'Sovereign,' and is said to have sovereign power, and every one besides is his subject."

Thus explained, the definition may be taken as a convenient starting-point for an inquiry as to the validity of the reasons for constituting such an artificial person, and as to the form that any such delegation should assume in order to minimise its dangers and maximise its advantages. The purpose of the State, as conceived by Hobbes, is simply the peace and common defence of the constituent members. Proof of this need is, of course, easy enough. Hobbes has been blamed, with some justice, for taking on the whole an unwarrantably low view of human nature; but he is on safe ground when he points to the general use of bolts and locks, even under such a régime of law as England, France, or Holland could boast of in his time, as showing what would be our case if there were no tribunals and no police. His general proposition, that if any two persons desire the same thing, which nevertheless they cannot both enjoy, they become enemies, and seek to destroy or subdue one another, is unfortunately verified in a sufficient proportion of cases, in all situations where natural instincts have free play, from the nursery at one end of the scale ¹ to international relations at the other, to support the conclusion that no tolerable security for the peaceful pursuit of private ends is possible

¹ "Moll o' the wood and I fell out;
What do you think 'twas all about?

She had butter, and I had none;

That was the way the fight begun."—ANON.

except at the price of general submission to an irresistible common superior.

So far all serious thinkers are agreed who approach the subject in a spirit of mundane scientific inquiry. Voices are, no doubt, raised impressively from time to time in condemnation of the co-operative force-agencies called States ; but these voices appeal to considerations altogether outside the domain of science. There is no instance in history of a self-sufficing community of non-resisters. Where a sect, such as the Quakers of England and America, or a class, such as the Buddhist monks, has been kept going for any length of time on that basis, it has been indebted for its survival to the protection and toleration of a government conducted on quite other principles, and sufficiently strong, thanks to the military spirit of other classes of its subjects, to be able to dispense with the armed co-operation of this particular section. Herbert Spencer sedulously collected all the travellers' accounts that he could find of tribes supposed to be absolutely pacific ; but they were tribes with so low a standard of life, and so small a capacity for labour, that little was to be gained by either despoiling or enslaving them, and for the same reason they could not be pointed to as contributing anything appreciable to the sum of human happiness. Here at all events no more time will be wasted in discussing the Tolstoyan ideal of pacific anarchy.

Of those of us who are not Anarchists or Quietists, some will perhaps quarrel with the Hobbesian definition as including too little, others as including too much. To Edmund Burke, for instance, as to a popular school of philosophers in our own time, "peace and common defence" seemed altogether inadequate ends for so magnificent an instrument as the State—

"The State ought not to be looked upon as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some such other low con-

cern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties. It is to be looked upon with other reverence ; because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science ; a partnership in all art ; a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership between those who are living, those who are dead, and those who are to be born." ¹

This sounds very fine, and might be reasonable, if it did not happen to conflict with the essential notion of partnership. It is of the essence of partnership to be voluntary ; Burke evidently assumes State membership to be compulsory. Again, partnership is, as the Roman lawyers express it, a contract *uberrimæ fidei*—that is, it implies a special degree of personal intimacy and mutual confidence between the partners. No such personal confidence is conceivable among the many millions of contributories to the modern State.

But even between two individuals, at all events outside the conjugal relation, a partnership embracing all objects of human interest is, to say the least, extremely rare. The Romans, it is true, recognised the possibility of a *societas omnium bonorum*, but their writings throw little light on the occasions that might give rise to it, or the manner of working it out, while in England "universal partnership" is practically unknown, and limited liability is the general rule for all associations of any magnitude.

A closer analogy might have been found in those joint-stock companies which have multiplied so enormously since Burke's time. To these, certainly personal intimacy and mutual confidence are not considered essential ; but that is because the liability of the shareholders is limited, so that they are not so much partners as lenders of capital at a rate of interest proportionate to profits, and with a collective control over the manage-

¹ "Reflections on the Revolution in France," p. 143, ed. 1890.

ment of the business which is seldom effectively exercised. The modern State, on the other hand, is in the habit of treating the liability of its members as unlimited. It is true that Burke, only a few pages further on in the very treatise from which I have just quoted, seems, in a way, to put the right of private property above the right of the public creditor.

“It is to the property of the citizen, and not to the demands of the creditor of the State, that the first and original faith of civil society is pledged. The claim of the citizen is prior in time, paramount in title, superior in equity. The fortunes of individuals, whether possessed by acquisition or by descent, or in virtue of participation in the goods of some community, were no part of the creditor's security, expressed or implied. They never so much as entered his head when he made his bargain. He well knew that the public, whether represented by a monarch or by a senate, can pledge nothing but the public estate; and it can have no public estate *except in what it derives from a just and proportioned imposition from the citizens at large*. This was engaged, and nothing else could be engaged, to the public creditor. No man can engage his injustice as a pledge for his fidelity.”¹

In the sentence I have italicised, however, he virtually concedes the right of unlimited taxation, provided that it is equitably apportioned; which assimilates the State to an unlimited joint-stock company.

“Membership with unlimited liability, imposed on a number of people without their consent,” is a less alluring, but more accurate, description of the fundamental postulate of the modern State than Burke's “partnership in all science, in all art, and in every perfection.” That being so, it becomes of very serious moment to inquire whether this compulsory liability is unlimited with regard to the amount of calls made on the shareholders, and whether there is any such thing as an act of State which is *ultra vires*.

Now there is a sense in which this last question must

¹ “Reflections,” p. 160.

undoubtedly be answered in the negative. The tribunals which pronounce on the validity or invalidity of the acts of directors of companies are themselves the creatures of the State, and it is involved in the very conception of the State that it cannot itself be subject to any corresponding jurisdiction. There may or may not be a written constitution defining the functions of the regular organs of the State, as well legislative as executive, and a Supreme Court empowered to interpret that constitution. There is such an arrangement in the United States of America ; there is nothing of the kind in our own United Kingdom. But the American Supreme Court is itself only a creature of the American nation ; the written constitution provides a regular mode of procedure for its own amendment ; and if it were not so, the constitution could be abrogated in case of need by a *coup d'état*, the authors of which would continue to represent the State so long as they were able, by foul means or fair, to secure the *de facto* obedience of the people. With or without constitutional forms, the body which possesses a monopoly of all the available physical force can define as it pleases the limits of its own activity ; and where there is no body possessing such a monopoly there is no State. That, however, is not the sense in which the question is here asked. We are just now inquiring, not what governments can do, but what they ought to do, and more particularly what they ought on principle to abstain from doing.

One more caution seems necessary. We are not treating here, like Herbert Spencer in his "Social Statics," of the arrangements that might be suitable for a community of "straight men." In such a community our question would have no meaning, because, if there were no "crooked men," no actual or potential wrong-doers, there would be no room or *raison d'être* for anything in the nature of a State or Government, as the terms are here understood. Our problem assumes a world com-

posed of beings whose dispositions are partly good and partly bad, partly social and partly anti-social, and in each of whom these opposite tendencies are mixed in different proportions. We are asking, What useful purposes are likely to be served in such a world by an association of individuals employing their collective force to impose their collective will on all within the range of their operations? Do existing States err by excess, or by defect, or both, in regard to the list of matters that they undertake to regulate?

The natural order in such an inquiry is to work from the centre outwards; so we will begin with the most indisputable of all State functions, that of keeping the peace. Whether it is first in the historical order of development is for our present purpose immaterial. It may be that the original germs of what afterwards grew into States are more often to be found in associations for breaking the peace and sharing the plunder of unprotected industry; and that the necessity for keeping the peace within the robber camp, and for settling quarrels among the fellow-brigands with some appearance of equity, presented itself first of all as a military necessity. But be that as it may, the first consideration that presents itself to the right-minded modern citizen, when taking stock of his ethical relation to the State, is the absolute indispensableness of tribunals, backed by adequate force, for deciding quarrels and redressing wrongs.

It is important to make sure of our ground at this stage before going further. Why is it necessary to form a special association for defining and enforcing rights? Had the defining of rights been the only thing needed, the want might have been adequately met by individual effort under the stimulus of free competition,—as it was in the Homeric age, according to an oft-quoted passage in the “*Iliad*,” where in presence of the assembled tribesmen a substantial prize is offered for the best solution of a

private dispute, apparently at the expense of the litigants themselves ; as in ancient Ireland while the Brehon laws prevailed ; and as in Iceland, according to the sagas. Even in pioneer settlements of modern times, pushed beyond the range of effective State control, the same method has its uses. There is an Australian story of a gentleman who turned an honest penny at the gold-diggings by chalking up over a shanty : “ Causes decided here, by a barrister of Lincoln’s Inn ” ; and taking his seat therein behind a broad and solid piece of furniture, with a bowl for his fees on one side of him and a revolver on the other. But honourable and useful as is the function of an arbitrator, freely chosen by a pair of litigants who are sincerely desirous of being guided by a cooler head than their own, it is unfortunately rather the rule than the exception for the same frailties of temper that occasioned the original dispute to militate equally against an agreement as to the arbitrator to be selected, and against peaceable submission to the award when given. Independent States stand towards each other in a relation closely analogous to that of individuals in a state of anarchy ; but though professors of international law are held in high esteem, and from time to time contribute very materially towards the prevention or settlement of disputes of secondary importance, it is the masters of legions who have the last word when the cause of antagonism is really deep-seated. For the ultimate disbandment of the huge armaments of modern world-powers, we must depend on a continuance of the same process to which we owe the dismantling of feudal castles and the disappearance of the rapier from the ordinary outfit of a private gentleman ; namely, the monopolising of physical force by regular governments, and the gradual absorption of the less efficient of these by the more efficient—efficiency being estimated with reference both to the defining and to the enforcing of

rights between man and man ; both to the justice and to the vigour of the administration.

Well now, supposing a "Justice-Enforcing Association" to be formed voluntarily, what are the fair and natural conditions of the contract? What are the personal benefits that I expect to derive from membership of such a body? Surely not that whenever I find myself engaged in a quarrel I shall be helped to get the better of my adversary, right or wrong; but rather that (1) I shall be informed, as the result of the most impartial inquiry that the association is capable of providing, whether the right is on my side or on that of my opponent; and (2) that if the right is declared to be on my side, and if my opponent will not comply peaceably with the award, the association will employ all necessary force to compel him to do so.

In the opposite event a Socrates¹ would perhaps regard it as a personal benefit to himself that he should be compelled to submit to the award, and should be punished if he deserved it; but that is a counsel of perfection, and it will be more congenial to ordinary human nature to reckon this as an item on the debit side of the account.

The obligations that I am willing to incur in consideration of the above-mentioned benefits are—

1. To submit peaceably to any adverse decisions that may be passed against me by the duly constituted authorities of the association;

2. To contribute personal services, or money, or both, as and when required, in furtherance of the common purpose of the association, it being understood that the governing body will endeavour so to frame their assessments as to exact from each member, not equal amounts or equally useful services, but equal—that is, equally painful—sacrifices.

Generally speaking, it will be found the most effectual

¹ See Plato, "Gorgias," 527 B; and compare Bernard Bosanquet's "Philosophical Theory of the State," p. 223.

way of working out this principle to buy the required services at the market price, and then to raise the money by whatever scheme of taxation will produce the nearest approximation to equality of sacrifice, after giving due weight to such other considerations as comparative facility of collection and prevention of fraud.

Thus, to take a familiar and frequently debated instance, if the required military force is raised by conscription, the result is that the burden presses most unequally on the members of the association. Excluding for the moment those who must perforce be exempted from military service on account of age, sex, or other physical disqualification, and supposing that the obligation is limited (say) in war-time to normally healthy males between twenty and sixty, and for training in time of peace to two or three years of early manhood, still, even among persons answering this description, the inequality of sacrifice is enormous. Of two young men, one may be unmarried, hardy, adventurous, not easily shocked by scenes of violence, but averse from steady industry, and not well fitted to thrive by any peaceful trade; another constitutionally timid, tender-hearted, and full of conscientious scruples, with a wife and family dependent on him, and admirably adapted for some civil career which may be closed to him by the time he has served his two years in barracks. What can be more stupidly wasteful than to lose the services of an excellent wealth-producer for the purpose of obtaining an unsatisfactory recruit? Or what more unfair to both the individuals concerned than to secure the services of the apt soldier for less than the fair market price of his activity and courage, while exacting from the other a sacrifice vastly in excess of what it would have cost him to supply through the open market a thoroughly efficient substitute? On the other hand, by the straightforward policy above suggested, the burden is automatically adjusted so as to combine the

minimum of inconvenience to each member with the maximum of value received by the association.

What is to be the attitude of the association towards non-members? In this, as in all other matters, we start with the presumption that partnership should be voluntary; but the special purpose of this association introduces a difficulty. It is true that *co-operative compulsion* is quite distinguishable in thought from *compulsory co-operation*, but the position of those against whom coercive measures are contemplated as actually or potentially necessary will be a very awkward one if they resolve to stand aloof from all justice-enforcing associations. If they are thought to have wronged a member of any such league, they must expect to have its whole force brought to bear upon them for the exaction of redress; whereas, conversely, if they consider themselves to have suffered wrong, it is nobody's business to listen to their complaints. On the twofold ground that an individual who sets up to be judge in his own cause is sure to be often wrong, and that whether right or wrong he is sure to get the worst of it in conflict with even a small organised body, membership of a force-association of some kind is as much a necessity for existence as is a market to the producer of commodities. A man can no more hope to escape destruction at the hands of his fellow-men without some arrangement with the better disposed of them for mutual protection, than he can expect to maintain himself in comfort by making everything that he requires with his own hands.

Have we then, or ought we to have, the same freedom of choice among competing force-associations as we ordinarily have among traders competing for our custom, or employers competing for our services? The answer to this question depends on the peculiar nature of the service offered. If it were simply a *justice-declaring association*, undertaking to arbitrate when appealed to, it would have no more right to complain of fair

competition than a physician or a lawyer. If, on the other hand, it were simply a *force-association*, offering to supply forcible backing for all those disputants, and for those only, who could and would pay for it, it would thereby declare in effect that right and wrong were no more to it than light and darkness to the blind. Those who wanted justice would have to look elsewhere. But when the object of the combination is to supply *justice backed by force*, how is it possible to compete peacefully with similar associations within the same area? If one of two associations lays his case before Association A, and the other before Association B, and each refuses the jurisdiction of the other, what can the result be but opposite proceedings for contempt of Court, and armed collision between the officers of the rival tribunals? It is, of course, quite possible, supposing both associations to be sincerely desirous of doing justice, that in this or that case they may arrive independently at the same conclusion, and back an identical award with their joint forces; but if this were to happen often it would amount to a virtual fusion of two associations into one. Practically there is no escape from the Hobbesian conclusion, that, as the first condition of tolerable security, all the available physical force must be concentrated in a single governing body, empowered to settle all disputes that are not amenable to non-coercive treatment. And inasmuch as the work of such a body involves large expenditure, both of money and of personal effort, it will be well within its rights in refusing to help those who could, but will not, contribute either one or the other. To the extent, then, that dread of outlawry operates as an effective form of compulsion, it is inevitable that at least passive membership of the State in whose territory we happen to reside should be compulsory. Protection and allegiance are correlative and inseparable.

What, then, of the large number of aliens found in

most modern States? The truest account of their position is, that while counting as permanent members of one force-association, they render a temporary allegiance, in return for temporary protection, to another. Though a delimitation of frontiers is, as we have seen, a *sine qua non* for the co-existence of independent force-associations, it is after all only a makeshift. The main end for which States exist is very imperfectly attained unless people are allowed to pass freely from one territory to another; therefore the general understanding between friendly States is that the subjects of one residing in the territory of the other shall for the time being be entitled to the same benefits and liable to the same obligations as the subjects of the latter, *minus* the right of electing or being elected to political office, and *minus* the obligation, which may or may not be imposed on nationals, of personal military service. The maintenance of this understanding is, however, always precarious, and is wholly impracticable without a fairly close similarity between the laws and moral standards of the two peoples, and some readiness on the part of the two governments to give each other credit for an honest desire to deal out impartial justice. Where the difference of ideas and the mutual distrust are great, one of two things must happen. Either no diplomatic intercourse at all will be attempted between the mutually unsympathetic Powers, and the subjects of each will be given to understand that they visit the territory of the other at their peril, their own government undertaking no responsibility for their safety; or else the more powerful, being always in its own opinion the more civilised of the two, dictates to the other at the point of the sword an arrangement whereby its subjects, resident in the territory of the latter, are to occupy a privileged position, being amenable only to tribunals appointed and supervised by the former. Such, for instance, is the nature of our consular jurisdic-

tions in Turkey¹ and China ; and such was, for some years after the opening of the Treaty Ports, the attitude of all the great Christian Powers towards Japan. To England belongs the honour of having been the first to admit that great and enlightened nation to full international equality, simply on the ground of the proved excellence of its codes and Courts of Justice, without waiting for the "blood-and-iron" demonstration of 1905. Even in time of war the practice is to afford such protection as is possible to those subjects of the hostile Power who do not choose to return to their national territory ; but it is granted as a matter of favour rather than of right, and is liable to be interrupted at any moment by military exigencies, and to be forfeited on the slightest suspicion that the alien is secretly aiding his own compatriots ; while, on the other hand, by actively aiding the Power that protects him he exposes himself to the penalties of treason at the hands of the other belligerent.

It must not, however, be supposed that the voluntary element in citizenship is limited to such transfers of allegiance as the naturalisation laws of different countries may happen to permit. Even where a person has practically no choice as to which of existing governments he will live under and look to for protection, he may comfort himself with the reflection that the organisation in which he is thus enmeshed is no soulless automatic machine, but an aggregate of impressible human beings like himself, who may be induced to combine for one purpose to-day and for quite a different purpose to-morrow. That competition among producers, which is constantly operating to reduce the price of commodities, operates in a different way, but not less effectively, to

¹ It so happens that the "Capitulations" with Turkey date from a period when the superiority of force was, if anything, on the side of the Turks ; but the fashion in which they are now worked would have been impossible unless the parts had been reversed.

reduce the price of police protection. Although, as we have seen, permanent competition between rival justice-associations would mean chronic civil war, and therefore the total destruction of the very commodity which it is the object of both to produce, the consumers of that commodity may very well think it quite worth while to risk its temporary disappearance through civil war on the chance of obtaining a cheaper supply from another set of producers ; or they may let it be understood that unless the internal administration is reformed the encroachments of some ambitious foreign Power will be rather encouraged than resisted. The possessors of the force-monopoly may indeed employ it for a time to suppress all competitive manifestations, which will figure in their vocabulary as treason or sedition ; but inasmuch as the force at their disposal is composed of no other material than sensitive and flexible human wills, impossible to guard from the contagion of anything like general discontent, the change which is staved off by such means is likely to be only the more sweeping when it comes ; and therefore the more prudent rulers anticipate the demand by acknowledging their dependence on the general will, and by devising suitable constitutional arrangements for periodically and peacefully ascertaining the same. Now that even Russia and Turkey, Persia and China, have Parliaments of a kind, the superiority of this method may be said to have received world-wide recognition.

Thus we arrive at the further conclusion, that the membership of a justice-enforcing association, or political society, ought as a general rule to involve, not merely protection in return for allegiance, but also a voice in the management of the concern. With or without formal voting power, the affection or disaffection of every contributing member counts for something as regards the chances of success and permanence ; but with it, the inevitable and wholesome competition for

leadership within the association takes a less violent and more beneficent shape.

Ought the suffrage to be absolutely co-extensive with allegiance ? Or if not, where should the line be drawn ?

There is no "ought" in the matter except this, that the wider the franchise the more complete will be the identity of interest between the consumers and producers of the commodity known as justice, and the greater, therefore, the probability that the quality of the article will be good, and that the price charged for it in the shape of taxes will be reasonable ; neither so high as to be oppressive to the citizens *qua* consumers, nor so low as not to afford them a sufficient margin of profit *qua* producers. If the consumer were fully free to deal or not to deal with this particular justice-shop at his pleasure, he would have no more moral claim to be also a shareholder in the concern than has the holder of a season-ticket from a suburban Railway Company to vote as such at a shareholders' meeting. But we have seen that in the matter of allegiance it is generally "Hobson's choice," and therefore, if he is to have the benefit of anything at all analogous to that free competition on which the ordinary customer relies for keeping up quality and keeping down prices, he must find it within the association itself, and it must take the form of competition between rival leaders and rival parties for political power. Now, any competition of this sort will not at all necessarily benefit him, unless the rival leaders have reason to feel that they are competing for his custom ; and since he will be compelled to deal with whichever of them secures the largest amount of support, his interests are likely to be neglected by both, unless they have reason to think that his support will count for something in the political struggle. Such support may, of course, be given in other ways than through the ballot-box ; but the more peaceful and orderly method is obviously preferable when, and

so far as, it is practicable, and it is equally obvious that, if some classes have votes while others have none, the latter will be at a disadvantage whenever the State has to decide between conflicting claims. There may be imperative reasons for a restricted suffrage in this or that community ; but it should be distinctly understood that every restriction involves a proportionate diminution in the probability that even-handed justice will pervade the laws and their administration.

Supposing it granted that the electoral franchise ought to be as nearly as possible universal, ought the voting power of all citizens to be equal,—“one man, one vote,” and “one vote, one value,”—as depending simply on allegiance? or unequal, and proportionate to taxable property? At the present stage of our inquiry, that is, so long as we are regarding the State simply as a justice-enforcing association, the reason above stated for making the suffrage as nearly as possible universal is equally valid for single as opposed to plural voting, and for giving to every vote as nearly as possible the same value.

The common objection to equal universal suffrage, namely, that the comparatively poor, being a majority, would combine to tax the rich for their own benefit, will cease to have any force when it is once for all understood that the association was formed for no other purpose than the defining and enforcing of justice, and that taxation for any other purpose, however laudable in itself, such as that of relieving destitution, is *ultra vires* and immoral; whereas the further the practice is extended of applying the produce of rates and taxes, and the profits of State-managed businesses, to any and every purpose which happens to commend itself to the dominant majority, the more closely will the case approximate to that of an ordinary joint-stock company, and the more reasonable will it seem that the

voting power of each shareholder should be proportionate to the amount of his contribution.

There is indeed one direction in which the vote of a thoroughly democratic electorate would naturally, and quite rightly, tell in favour of spending more public money for the benefit of the poor than is usual in any modern State, and to which the plea of "*ultra vires*" would not apply. I mean the dealing out of justice itself, the very commodity which the association exists to provide, absolutely free of cost to all, rich or poor, who have contributed to its general fund the quota due from them—if any. Why "*if any*"? Because, when we come to apply practically the principle of equality of sacrifice as the basis of taxation, we shall find in most countries a residuum of people so poor that any tax worth levying which touches them at all will cause suffering more than commensurate with any benefit that they are at all likely to derive from State protection. Of such people it may be said that simple submission to the laws which protect the property of their more fortunate fellow-citizens is quite enough sacrifice on their part to entitle them to redress at the public expense when they happen to require it. Moreover, it should be constantly borne in mind that among the contributory causes of poverty is pretty certain to be found some wrong-doing, mistake, or neglect, on the part of the State itself, and that the best chance of discovering and redressing such mistakes lies in the securing to rich and poor alike the easiest possible access to the tribunals. And whatever reason holds good for affording State protection must be also good for giving the electoral franchise to those who are not wilful defaulters in the matter of taxpaying, but are properly exempted on the score of poverty; because, as we have seen, every vote refused (and every inequality of voting power) is *pro tanto* a weakening of the forces making for equal justice and efficient government, and

a licence to somebody to trample on the rights of the unrepresented or inadequately represented individual or class. Practically, it is inconceivable that without very gross maladministration or very unjust laws the untaxable residuum of the population could ever come to constitute so considerable a proportion of the whole that it would be dangerous to allow them equal voting power with the others. To admit that the time is not ripe for universal and equal suffrage is to admit that it must be more than ripe for some other kind of radical reform.

Want of education, or lack of leisure to study political questions, is no more a reason for disfranchisement than ignorance of medicine is a reason against allowing a patient to choose his own physician. In the one case as in the other, he can seek the advice of friends better informed than himself, and in both cases alike his own interest is the chief matter at stake, and will seldom be quite so safe in the keeping of any other person as in his own. This is commonly denied, through failure to perceive, or deliberate refusal to admit, that the public interest is made up of the several interests of the individuals composing the community. Of course, "his own interest" includes the gratification of his sentiments,—patriotic or other,—no less than of his more material desires. The important point is that every candidate should have a motive for taking note as far as possible of every real or imaginary grievance of every inhabitant of the district that he aspires to represent, and for trying to discover some form of redress that he can reasonably undertake to demand.

Mental debility or immaturity is an adequate reason for disfranchisement only when it is such as to disqualify the person in question for being allowed to manage his or her own private affairs, and to necessitate the appointment of a legal guardian or curator.

Crime and pauperism should be grounds of disfranchise-

ment if, and only if, they involve actual deprivation of liberty at the time of the election in question. It will be seen hereafter that under our system this would be the case with paupers to a much greater extent than at present—in fact, almost universally. The mere fact of a person having undergone punishment for an offence, however heinous, is no sort of reason why his legitimate interests should not receive as careful attention as those of any other citizen. Persons actually in a state of rebellion are, of course, in a different category altogether.

The really serious reason for a restricted franchise in many countries is to be found, not in the moral or intellectual deficiencies of the excluded classes, but in the unconfessed deficiencies of the governing classes themselves. If in any country the class actually possessed of political power happened also to possess sufficient unselfishness and sufficient self-control to resolve on giving a fair trial to universal suffrage, by making such arrangements as would ensure the purity of the elections, give clear guidance to the electors as to how to record their votes and what the vote meant, and enable the rival candidates to put their views fairly before the people, I believe that scarcely any amount of ignorance on the part of the masses would prevent the assembly so elected from being a better one than if the suffrage had been kept as the exclusive privilege of the well-to-do. On the whole, those who had done most to deserve the confidence of their poorer and less cultured neighbours would get it; would get it for themselves if they wished to enter Parliament, or if not, for those who had in turn earned their confidence, and for whom they might think it worth while to canvass.

If, then, I am asked whether, for instance, I would advocate universal suffrage for South Africa, with its large coloured population, or if not why not, my answer will be, that the two white races in South Africa are

not yet sufficiently civilised to have that degree of good will which is essential to the safe working of such a system; while the bulk of the coloured population, being at present distinctly on a lower level of political aptitude, would be quite incapable of playing their part usefully without the cordial co-operation, and benevolent guidance, of the more advanced races. That their interests have received in the past, and are likely to receive in the near future, less attention than those of the dominant and voting races, is only too certain; but that they ever were, or could be now, better off in the matter of justice and security under their native chiefs, I see no reason whatever to believe. The measure of protection that they now enjoy under laws made by white men, though far from perfect, is probably much better than they are at present capable of providing for themselves, and quite worth their while to pay for. Before they can obtain the additional protection of the vote, in such a form as to be real and effective, there will have to be a considerable moral improvement, either in them, or in the white men, or in both.

The same answer would serve for India, if it were merely a question between superior and inferior races, and between higher and lower castes, among the permanent population of that vast dependency. But the fact of its being a dependency puts the whole matter in a different light.

If there are to be found, in the country itself, a sufficient number of persons willing and able to form an effective "justice-association," the task ought to be left to those persons; because there are inherent difficulties in government of one people by another situated on the other side of the globe, through agents sent out for the purpose, neither born nor bred, nor intending to become domiciled, among the people com-

mitted to their charge, and whose personal interests remain from first to last centred wholly in their native land. Even with the best intentions on the part of the ruling nation, these difficulties can never be entirely overcome; consequently the task should never be undertaken or continued if there is any tolerable alternative. During the century (1757-1857) which witnessed the gradual establishment of the British supremacy in India, it may fairly be said that there was no tolerable alternative, at least from the point of view from which this book is written. Regarded as instruments for protecting peaceful industry and dealing out equal justice, the various native governments which had sprung up on the ruins of the old Mogul Empire were undeniable failures. No serious student of history, whether Indian or European, denies that in these essential points British rule has been, relatively speaking, a success. But this very success was bound to produce in time conditions more favourable to the formation of an indigenous justice-association, which would, other things being equal, have an immense advantage over any possible government operating from Downing Street, for the reason above stated. There will naturally be much difference of opinion as to the precise point of time when other things have become so approximately equal as to cause the inherent advantages of Home Rule to turn the scale. Two things, however, seem fairly clear if our general principle is admitted. First, that so long as the necessity for foreign rule continues, any experiments that may be tried in the way of elective governing bodies must be merely experiments, and must leave the ultimate decision of all questions in the hands of the paramount power. Next, that ripeness for universal suffrage, or for anything approaching to it, should not be considered a *sine qua non* for the granting of Home Rule. It will be sufficient if a workable constitution can be framed which will vest the supreme

legislative and executive power in some set of persons who may be reasonably expected to maintain external and internal security even nearly as well as it is now maintained by European officials responsible to the British Parliament. If they do it nearly as well at the outset, they will do it quite as well or better after some years' practice, and will be followed in due course by still more capable successors, who will doubtless be led in due time, by experiences more or less analogous to ours, to see in democracy a more perfect stage for the exercise of their best gifts.

But I must repeat emphatically, that whether it be a question of Indians subject to foreign rule, or of voteless women taxpayers at home, the mere lack of voting power can never by itself justify either active or passive resistance. For every one of us, whether voter or non-voter, the duty of obedience depends simply on the question whether the measure of protection afforded is or is not a fair equivalent for the sacrifices exacted. Unless the Government is either so inefficient or so oppressive as to make me prefer anarchy or revolution, I am acting ungratefully and disloyally, vote or no vote, in withholding my support while I avail myself of its protection.

CHAPTER II.

THE NECESSARY OPERATIONS OF A JUSTICE-ENFORCING ASSOCIATION.

THE famous advocate Erskine is reported to have said that the whole object of the British Constitution was to get twelve honest men into a box ; and there is this amount of truth in the observation, that if disputes are not fairly adjudicated the main purpose of the State is frustrated, and an honest man would prefer to have nothing to do with the concern. I therefore rank first among the necessary operations of the State—

I. THE ESTABLISHMENT AND MAINTENANCE OF JUDICIAL TRIBUNALS.

How they should be constituted ; what should be the gradation of courts ; how many judges in each, how appointed and how paid, and what should be the course of procedure, this is not the place to inquire. But it does concern us to note that these tribunals, considered as organs of the State, are distinguished from mere courts of voluntary arbitration by the fact that there is irresistible force at the back of them, ready to compel attendance of all necessary parties, to preserve order during the process of investigation, and (most important of all) to compel submission to the judgment

pronounced. We name, therefore, as the second necessary operation,

II. MAINTENANCE AND DIRECTION OF A POLICE FORCE,

including the officers employed in the infliction of punishments and in the management of prisons.

Closely connected with this branch, and yet sufficiently distinct from it to deserve separate mention, is that of—

III. MAINTENANCE AND DIRECTION OF MILITARY (AND NAVAL) ARMAMENTS.

The distinction is that the Police Force is meant to deal with individual law-breakers and contumacious persons, while the Army and Navy are required to assure the general supremacy of the State against organised rebellion within the territory and against attacks of foreign Powers without, as also for extension of its sphere of action when circumstances justify it.

The impossibility of two States operating over the same area without clashing has been already pointed out, and the necessity for repelling attacks from without will not be disputed; but one does sometimes hear it said or implied that the purpose of all armaments should be purely defensive, and it is therefore worth while to explain why no such strict line can be drawn.

The boundaries of States are not watertight bulkheads. Even in the regions most favoured by nature, only a very sparse population can subsist at all without external trade, and no population can hope to advance in numbers and wealth except by concentrating its energies on those industries for which it is best adapted, and then exchanging its products for such as are produced more cheaply elsewhere. Trade implies almost necessarily travelling beyond the borders of one's own State, and quite necessarily intercourse of a kind liable to lead to

disputes which will call for judicial intervention. If our merchants are unjustly treated by the Government of a foreign country, it is hardly less necessary to the well-being of our community as a whole that we should intervene forcibly on their behalf, than that we should repel by force an actual invasion of our own country. It is all very well to talk of renouncing intercourse with the inhospitable country. No doubt there are cases in which a threat to that effect will induce the offending Government to mend its ways, out of regard for the commercial interests of its own subjects ; and there are also cases in which the loss by abandonment of the trade would be less than the cost of fighting for it. But there is a third class of cases in which the trade is worth fighting for, and cannot be secured without fighting. Such was the case with India in the eighteenth, and with China in the nineteenth century.

Even more important than the question of trade is that of settlement. Where the actual occupants of a country are few and barbarous, this almost necessarily implies that they produce little that is commercially valuable, and that if the resources of the country are to be properly utilised it can only be by the immigration of people endowed with better brains and more energy. Does any principle of natural justice require that the present occupants should be allowed a veto on such immigration ? I think not. All that justice requires of the newcomers is that they should respect the homesteads and clearings, the personal belongings and the personal liberty, of the natives, and also that they should pay all practicable respect to any political institutions that they may find already established, and should only in the last resort take upon themselves to substitute by force a government of their own. In practice this necessity generally does arrive pretty soon, where the inequality in social progress is very great ; nor must indignation at the high-handed methods that have

too often characterised the pioneers of civilisation blind us to the truth that such enterprises as theirs are intrinsically quite legitimate. A society for enforcing justice may rightfully contemplate expansion of its sphere of operations as a natural and probable result of increased efficiency, just as contraction, if not absorption in some more successful undertaking of the same kind, may be necessitated by diminished efficiency. The ideal director of such a company will observe all that goes on beyond the frontier with a single eye to the furtherance of justice. His one question concerning foreign Powers will be, how far they are working for that object and how far against it? If the former, how can we help them? if the latter, how can we hinder them, without neglecting our home duties? Will such an ill-governed community right itself if left alone, or is the case so desperate, and our superiority so unquestionable, that we can and ought to step in and take charge? From this point of view it is evident that armaments must be kept in readiness for offensive as well as defensive warfare, but on a scale suitable to a merely secondary purpose, the primary purpose of the association being the maintenance of security within the area already under its exclusive control. The habitual inversion of this order of procedure is a fault common more or less to all existing governments. The ruling class in any country is generally disposed to be sceptical as to "Peace having her victories no less renowned than War." They find their dignity enhanced most of all by successful war, and next to that by constant and costly preparation for war, whereas the steady growth of general prosperity as the result of good internal administration involves a general levelling-up which is apt to give those atop the sensation of being dragged down.

The necessity for maintaining armaments, and being prepared for alternations of war and peace with neighbouring Powers, involves—

IV. A FOREIGN OFFICE AND A DIPLOMATIC SERVICE.

And in the case of an expanding State this may or may not have to be differentiated from—

V. A COLONIAL OFFICE,

to transact business with those members of the association who have settled at such a distance from the parent country that they cannot participate on equal terms in the ordinary duties and rights of citizenship, and must have for most purposes a separate administration of their own, while at the same time they do not feel strong enough for, or do not desire, complete independence.

The five functions above enumerated seem to be those which are most obviously and necessarily involved in an undertaking to enforce justice between man and man. There are two others which belong not specially to this, but to every kind of joint-stock enterprise. All undertakings require money, and more or less elaborate arrangements for collecting, keeping, and disbursing it. But whereas in commercial companies the shareholders are merely expected to contribute once for all to form a capital fund wherewith to start the concern, and the revenue is supplied from time to time by the business itself, in the form of payment by customers for goods sold or services rendered, non-commercial associations depend mainly, as a rule, on periodical contributions from the members ; and the State, according to our conception of it, must be classed with the latter rather than the former. Justice is not a commodity that can be sold over the counter ; on the contrary, it is a commodity which can only be kept pure by being most carefully dissociated from any sort of bargain with those to whom it is supplied. It is essential to the proper conduct of a justice-enforcing association that its revenues should be derived from

some other source than payments by actual litigants. Whether the necessary contributions are levied by direct compulsion, as is the actual practice, or by the equally effective and more manifestly just, though possibly more troublesome, method of refusing State protection to wilful recusants, or by the method of simple solicitation, unbacked by any sort of threat, direct or indirect, on which a few ultra-voluntaryists would have us rely, it is certain that this matter of ways and means will demand very careful organisation and the employment of many different grades of officials ; consequently, that we must add to our list of necessary State functions—

VI. A FISCAL DEPARTMENT.

Now, of course, the collection of money for any purpose implies some sort of provision for its safe custody in the interval between receipt and disbursement ; but if this were all, no one would think of treating it as a separate State function. Further consideration, however, will show us that the custody and management of property is forced upon the State on quite other grounds and on a vastly larger scale.

Among the problems which will most certainly present themselves for solution as soon as ever the judicial tribunals get to work, one of the very first will be that of settling the principle by which they ought to be guided in admitting or rejecting claims to private property. If, for the sake of clearing our ideas, we set aside for the present all questions of vested interest, and assume provisionally that our armed apostles of justice are intervening for the first time in a promiscuous scramble for the means of subsistence, it will not take us long to arrive at the conclusion that the surface and crust of the globe, the former as the stage on which all human action has to be carried on, the latter as the raw material

out of which all forms of wealth have to be created, can never without injustice be withdrawn from common enjoyment, and encroached upon by private enclosures, unless all who might conceivably have made use of the enclosed portion in its open state receive some sort of compensation proportionate to the value of their lost chances. Mere first occupancy constitutes in a Court of Ethics no title at all. First occupancy coupled with improvement, as where a bit of primeval forest has been cleared and cultivated, gives a title to some exclusive advantage proportionate to the added value, but subject thereto the common right of all mankind remains the same as before. But inasmuch as the possible modes of common enjoyment of primeval forest, or even of open prairie, are few and unprofitable, while the greater potential utilities demand for their realisation the steady application of labour and capital, it would be a dog-in-the-manger sort of justice that would discourage all industrial enterprise by forbidding exclusive possessions. Most people will agree that here the literal meaning of "common enjoyment" must be enlarged, so as to cover any benefit that can be secured for mankind in general by means of any fair bargain between the individuals who are desirous of extracting the greatest possible utility from a specified portion of the common God-given store, and the State as representing all other interests; the interest of those whose range of free locomotion will be restricted by the enclosure, the interest of those who might have used the same raw material for the same or for some other industrial purpose had they not been anticipated, and the interest of unborn generations that their chances of enjoyment and wealth-production shall not be diminished by any action of their predecessors. The necessary State action will therefore fall under one or other of two categories—

1. Regulating the common use of unappropriated land;

2. Regulating exclusive use on such terms as will secure adequate compensation to the excluded at the expense of the excluding individual or body.

Under the former head we shall be almost forced to include, besides the laying down of rules as to what the public may or may not do in open spaces, provision at the public expense of those aids and appliances without which the common use would be more or less illusory, and which it would not be worth the while of any individual to supply at his own expense for the benefit of non-contributing neighbours. Whence are the funds to come for the construction and maintenance of roads, bridges, canals, and harbours, and in towns for drainage, sewage, lighting, and paving? To admit the propriety of compulsory taxation for such purposes involves, no doubt, some enlargement of the original basis of our association. Are we justified in refusing police protection and access to Courts of Justice to the man who refuses to pay his quota of a highway rate, while he punctually pays his share of all the expenditure which is connected with the enforcement of justice in any of the six ways enumerated?

The answer to this question depends upon another, namely, whether the works in question are part of the necessary or desirable apparatus of a justice-enforcing association. Some of them undoubtedly are so. The better the roads and other means of communication at the disposal of government, the easier will it be for the police to maintain order in time of peace, and for the army to concentrate for attack or defence in time of war. Harbours and lighthouses are no less useful for ships of war than for merchant ships; nor can towns be properly policed at night unless they are well lighted. If the case is such that it is worth while to construct these works for the purposes of the State at the expense of all its members, the expenditure assuredly will not become less justifiable because they minister

incidentally to the convenience of the members individually. It is true, indeed, that from this point of view perfect justice might seem to require that the individual use of the State-provided highways should be paid for individually, in exoneration of the general taxpayer, seeing that some will derive much more benefit from them than others, and seeing also that some kinds of traffic will cause much more wear and tear than other kinds. On this principle toll-bars were formerly general on roads and bridges, and harbour dues are still universal. But against this have to be weighed two considerations, one of abstract justice, the other of practical convenience.

1. From the point of view of strict justice, if I am forbidden to use the public highway unless I contribute to its upkeep, I am thereby deprived without compensation of my original right, as a human being, to traverse any portion of the earth's surface at my own risk, surmounting the natural obstacles as best I can. It is as though you were to convert a hovel into a palace without the owner's consent, and then tell him that he must either pay the rent of a palace or turn out. If it is unfair that I should benefit without payment by an improvement made at other people's expense, it is still more unfair that I should be ousted from my own because of an improvement I never asked for.

2. As a matter of practical administration it will usually be found that the burden of the general taxpayer is aggravated rather than lightened by the toll system, because the rate of increase of the aggregate taxable wealth is so grievously retarded by all impediments to the free circulation of traffic. Even if I do not use a given road, I get off more easily by allowing its upkeep to be included in the State or municipal budget, to which I contribute my quota, than by imposing on the actual wayfarers conditions so onerous

that commerce will languish and rich contributors become fewer, while commodities become dearer.

There is, however, an entirely different point of view from which this whole question is capable of being regarded, and to which we shall be led if we pass on now to that other branch of necessary State action which consists in carving out private proprietary rights on terms which will secure adequate compensation to the rest of the community. What fairer plan can be devised for this purpose than that permission to enclose should be leased to the highest bidder—(leased, not sold, because it is imperative that no one generation of rulers should presume to sign away the rights of posterity)—and that the rents so received should be applied to some purpose by which all will benefit? Supposing that plan to be adopted, the first, or one of the first, purposes to which this money should be devoted, would seem to be the improvement of the land reserved for common use in such ways as before mentioned, roads, bridges, canals, and so forth; care being, of course, taken to avoid as far as possible any favouring of one class of the population more than another. Thus the countryman who finds his way barred over a ploughed field or through a copse by a notice that “Trespassers will be prosecuted,” may console himself with the reflection that the good roads, by which he reaches easily the places where his real business lies, have been made with the money paid by the landowner for permission to enclose. And similarly, when the citizen sees field after field in the line of his favourite walk marked as to be let for building, the compensation presents itself in the shape of well-kept parks and public gardens, and well-lighted streets.

The combination of these two lines of argument, that from the close connection between governmental efficiency and good means of communication, and that based on the impossibility of doing full justice in land

questions without constituting the State a trustee for the public at large, makes up a very strong case for a considerable State expenditure on public works, and for a corresponding State department. Acceptance of the views above expressed will naturally involve a more intimate connection than is usual in modern governments between the authorities charged with this duty and those representing the State in its capacity of supreme landlord, the rents accruing from appropriated land being primarily devoted to making more effective the common use and enjoyment of the unappropriated; so that we may perhaps be permitted for the sake of simplicity to treat provisionally as one—

VII. LAND MANAGEMENT AND PUBLIC WORKS,

leaving the distribution of work within the joint department to be settled afterwards as matter of subordinate detail.

In both of its branches the work of this department will in practice be largely decentralised, but throughout this treatise whatever is said of the State may generally be taken as applying also to municipal functions, and for our special purpose it will seldom be necessary to distinguish them. It is sufficient to emphasise here the broad principles on which both local and central authorities will be expected to act, the former deciding on their application in the first instance, the latter checking the aberrations to which all local authorities are liable; namely, (1) to get the highest obtainable rent for all privileges of exclusive use; (2) to respect scrupulously the right of the lessee to the full value of all improvements made by him, as well as to the periodically accruing profits of his skill and industry; (3) to provide in the first instance, out of the net land revenue for those modes of common enjoyment that are most universally appreciated, and that are [least open to

the suspicion of favouritism as between different classes.

But now suppose this done, and that there is still a surplus on the land revenue account. What is to be done with it? What, apart from measures facilitating the common use of the land itself, is the purpose most indisputably, and most equally, beneficial to all the members of the community? Surely it can be none other than the main purpose of our justice-enforcing association. True, the benefit of State protection can never be proved absolutely equal for all; but it would pass the wit of man to prove it more necessary to the rich than to the poor, or more necessary to the poor than to the rich, or to make out any other general inequality, unless it be that the well-disposed have more reason than the ill-disposed to bless good laws strictly administered. Even this affords but a vague line of discrimination, seeing that the greatest saint is not always in the right, nor the most habitual sinner always in the wrong. To the view that this is the proper destination of all surplus land revenue I have never heard but one objection deserving serious examination.

I have heard it argued that the proper mode of meeting the expenses of State protection is taxation, assessed on the principle of equal sacrifice, and therefore proportionately to each person's wealth; and that to apply in relief of taxation income accruing from the common property of the community, is equivalent to levying a tax to that amount, not apportioned according to wealth, but equally from rich and poor—in short, a poll-tax.

But why should a justice-enforcing association resort to taxation at all, so long as it has property at its disposal? Suppose the matter left to the decision of the poorest taxpayer; what fairer application of these rents would he be able to suggest? Would he ask to have his individual share doled out to him annually,

quarterly, or weekly, in cash? One sufficient answer to such a proposal is that the cost of distribution would more than absorb any probable surplus. Another is that the rents belong in strict justice no more to the subjects of the particular State in which the land is situated, than to foreigners, any one of whom might conceivably, but for the enclosure, have taken a fancy to roam over, or to cultivate, that particular portion of the earth's surface. According to the theory of the State presupposed throughout this treatise, no injustice whatsoever will be perpetrated by simply merging these rents in the general fund of the State that collects them; because, according to that theory, the whole energy of the State will be constantly devoted to a purpose in which all mankind are, or ought to be, interested. Within the sphere of its regular operations, its protection will be freely accorded, its courts will be impartially open, to every law-abiding immigrant. Outside those limits, its foreign policy will be conducted on the principle of co-operating as far as possible with all States that are honestly working towards its own ideal of universal justice, and of restraining those that are tyrannical and aggressive.

Moreover, if the objection which we are considering holds good for land-rents, it will also hold good for all other State revenue not derived from taxation. And it is well that we should be here reminded, that these unearned land values, though possibly the most important, are by no means the only ownerless things which a justice-enforcing association must, if it is to do its work completely, take possession of and hold in trust for mankind at large. I do not mean merely, what the intelligent reader will have taken for granted, that whatever is here said of land applies equally to all elemental forces, such as wind and water-power and electricity. I refer to the fact that even the products of human industry, to which the producer, supposing

the raw material to have been duly paid for, has in our view an unquestionable title, *may* have been voluntarily or involuntarily abandoned by the true owner, and *must*, sooner or later, be disconnected from his particular personality by his death. In the former case the title of the finder is at best an imperfect one ; good as against any other individual claimant, but impossible to admit as against mankind at large, unless we are prepared to sanction a free fight whenever two or more persons happen to be within reach of the same ownerless thing at the same moment. Most systems of law do actually assert public ownership in some cases (*e.g.* treasure trove) where it is easy and profitable to do so, while conniving at the appropriation in other cases as a matter of practical convenience. Much more important is the problem presented by the death of the owner. In the first place, ought the power of transfer, which is almost universally included in our conception of living ownership, to be extended so as to cover all or any testamentary dispositions ? And in the next place, supposing the deceased owner to have left no directions on the subject, should the ownership devolve as a matter of course on any and what classes of survivors ? English law goes much too far, in my opinion, in its affirmative answer to the first question, and as regards the second neither our own nor (as far as I know) any other Legislature has as yet adopted Bentham's very reasonable proposal to recognise no successors on intestacy more remote than nephews and nieces. Yet even as it is, a good many estates revert to the State for want of heirs or legatees, and from most of the rest a considerable slice is cut off by the death duties, which are commonly treated as a form of taxation, but which might more properly be regarded as a partial revindication by the State of property which has become ownerless by the action of the universal leveller. With saner views as to the bearing of the ancient observation, that a man can

carry nothing away with him when he dies, and with clearer perception of the wrong done to both living and dead by treating the latter as though they were still owners but without the living owner's power of changing his mind, the obituary windfalls accruing annually to the State would be double or treble what they are at present. The larger the mass of ownerless wealth at the disposal of the State, the lighter, relatively to the needs of the government, will be the taxation of the property owners; the lighter the taxation, the more rapid, *ceteris paribus*, will be the growth of taxable wealth through private enterprise; the greater the aggregate of taxable wealth, the lower the rate of assessment required in order to raise a given amount, and so to bring State protection in all its branches up to a given standard of efficiency. Thus it is quite conceivable, if the process is continued long enough, that the whole justice-enforcing machinery may ultimately come to be maintained at the highest point of effectiveness out of the common, unappropriated resources of the community without any resort to taxation properly so called. But when that point is reached the euthanasia of government itself, considered as the justice-enforcing organ of society, will not be very far off; though some public body will still be required to hold all ownerless wealth in trust for the common benefit.

As one chain of logical necessity has led gradually, link by link, from the simple restraining of aggressors to the custody and utilisation of ownerless things, and so to a department of land administration and public works, so another will compel us to include among necessary State functions—

VIII. THE CUSTODY AND MAINTENANCE OF DANGEROUS OR DERELICT INDIVIDUALS.

For although the mere fact of a person's habits and disposition being such as to make him dangerous to his

neighbours assuredly does not by itself give him a moral claim to be maintained at their expense, yet there are cases in which it is hard to see how the ends of justice can be attained without imposing this burden on the taxpayer.

Criminals.—When the offender happens to have property, the matter is simple enough. In the first place, he can be mulcted thereout for the benefit of the sufferers by his misconduct, and the fear lest this process should be repeated may not improbably work such an improvement in his behaviour that he may safely be left at large for the future. And in the next place, if his evil propensities are too violent to be tamed in this way, he may be placed under physical restraint, and at the same time maintained out of his own property. But where the offender has no property, the choice lies between simply afflictive punishment, such as death or whipping, and such detention as necessarily implies maintenance at somebody's expense; and this somebody must be, in part at least, and in the first instance, the State. Even if the culprit had previously been a wage-earner, the imprisonment will almost certainly interfere with his wage-earning, and to get sufficiently good work out of him within the prison to pay for his keep, *plus* cost of supervision, is practically impossible, *if we are thinking of a single individual and of immediate returns*. Whatever task he is set to is pretty sure to be something at which he is less effective than he would be at his regular trade, if any; instead of the labourer himself carrying his labour to the best market, its produce (if any) has to be taken to market at the risk and expense of the State; the ordinary stimulus of necessity will be lacking, because he cannot be allowed to starve after being deprived of his freedom, so that the only available substitute will be some form of direct compulsion, a state of things which is not conducive to high efficiency. But though there must almost certainly be an immediate

loss on a single case taken by itself, it does not quite follow that in the long-run, and on a large scale, wise management may not succeed in reducing the loss to insignificant proportions, or even converting it into profit. It may not be absolutely impossible, though it must be enormously difficult, to devise a system of reformatory training which will convert so large a percentage of prisoners into useful, self-supporting citizens, conscious of their debt to the State and willing and able to repay it, that the aggregate produce of their labour, during and after detention, may not only cover the cost of their own maintenance and pupilage, but also that of the irreclaimables and unemployables. But be that as it may, the cost of detaining and disciplining persons whom it would be dangerous to leave at large in their unreclaimed condition must obviously be reckoned as legitimate and necessary items in the expenditure of a justice-enforcing association. It is a question hardly to be determined on any general principle how far this expense can properly be saved by short and sharp punishment applied as a deterrent, or by putting the dangerous person to death; simple and easy as these methods may appear at first sight, their utility is narrowly limited by the consideration that the sight or hearing of death or torture will in some cases have just the reverse effect from that intended—alierating the sympathies, and cooling the loyalty, of the tender-hearted, stimulating the brutal propensities of spectators of another type, and thus sowing the seeds of a fresh crop of crimes, with further trouble and expense to the State.¹

Lunatics.—Still more clear is it that nothing but detention will serve the purpose with those persons

¹ I agree with Mr. H. G. Wells ("Anticipations," p. 301) that "in a more advanced civilisation than ours men will be more ready to kill than to torture those who are not fit to live freely in an orderly community, and will kill in the most painless manner that science can contrive."

who are dangerous to society without being fit objects of punishment, there being nothing in the nature of free will, or prevision of consequences, on which punishment can operate. And detention of a lunatic involves at least as much expense for maintenance and skilled supervision as does that of a criminal, with even less prospect of ultimate reimbursement. Of course, here also the expense would be borne by the lunatic's property, if he has any; and if he has relatives who can fairly be called upon to contribute, that is much the same as if he had property of his own. There may be also peculiar kinds of insanity not incompatible with the patient being put to profitable labour; but in the great majority of cases the whole expense will have to come out of the public treasury. In cases of apparently incurable melancholia the opinion will probably gain ground that death is not only the cheapest but from every point of view the best remedy.

This is not the place to discuss in detail the many difficult questions connected with lunacy, as for instance—

1. Where the line between sanity and insanity should be drawn for the purpose of actual physical restraint;
2. For what purposes, if any, the law ought to recognise an intermediate class of "feeble-minded," not requiring actual incarceration, but unfit to have the uncontrolled management of property, or the custody of young children, or freedom to marry;
3. What rules of procedure will most effectually protect the sane from being treated as insane, and the insane from ill-treatment and unnecessary coercion.

It must suffice to observe generally that all these matters lie well within the province of a justice-association, and to refer the reader to the elaborate provisions of the Lunacy Act, 1890, as embodying the best solutions that our legislators have so far been able to devise.

Paupers.—A more doubtful category is that of the non-aggressive individuals who either cannot or will

not provide by honest labour for their own subsistence. While their situation affords abundant scope for the exercise of voluntary charity, it does not by itself give any claim on the score of justice against any well-to-do individual in particular, nor, therefore, against society at large; and if there is no claim of justice, any expenditure on their account is *prima facie* a misappropriation of the funds of a justice-enforcing association and an injustice to the taxpayer. But there is something to be said on the other side. However inoffensive in intention the pauper may be, some danger to the community from his existence is unavoidable. Either extreme hunger will force him to steal, or disease and dirt, induced by want, will render him, however unwillingly, a nuisance to all withwhom he is brought into close contact. Moreover, the fact that actual crime is necessarily, as we have seen, a passport to board and lodging of a sort at the public expense, seems like a challenge to the simply destitute to make haste and qualify for a prison, unless at least equal accommodation is offered to them while they are still innocent. The plea is really unanswerable as against mere *laissez faire*, but it does not point to unconditional State relief for the indigent. The provision of board and lodging for the convict is incidental to his detention for preventive and disciplinary purposes. It should be the same in the case of the pauper, except that the character of the discipline will naturally be somewhat different, and that submission to it will be in the first instance voluntary. The non-criminal pauper should be allowed the option of remaining altogether aloof from the State system; but he should be warned that in that case he must endure his suffering as best he can away from places of public resort, so as not to endanger or incommode his more fortunate neighbours. He must, of course, have some way of making known his situation to those who might be inclined to relieve it, but it must be some

other way than that adopted by Lazarus. If, on the other hand, he desires State relief, he should be required, as a matter of simple justice to the taxpayers (who never meant to constitute the State their almoner when they bargained for its protection), to make a complete surrender of his liberty ; so that the Government may, in return for keeping him alive, both take all necessary precautions against his becoming a public nuisance, and also make what little profit they can out of him, like creditors taking over the assets of a bankrupt estate. A careful estimate should be made of his capabilities, which should be developed by training just so far as this may seem likely to prove a profitable investment and no further. He should be set to the kind of labour in which he seems most likely to be effective, relatively to the cost of his training, outfit, and supervision, whether this happens to be hand-work or brain-work, or whether it can or cannot be carried on within the precincts of the workhouse. The hope should be constantly held out to him of restoration to liberty whenever he is in a position to repay his debt to the State and to support himself independently for the future, and every facility should be afforded for outside friends or charitable societies to ransom him ; while those paupers who can have no reasonable ground for any such hopes must be persuaded or compelled to do their little best by such other inducements as the nature of the case may admit.

Our eighth State department will therefore include the supervision of both prisons and workhouses. But it must also comprise establishments not exactly resembling either, for—

Guardianless Children.—The protection of children against the tyranny or neglect of bad parents, and the provision of proper guardianship for orphans, seem inseparable from the general function of enforcing justice. Where there is property legally applicable to the child's maintenance, or where there is somebody

legally compellable to provide it and actually capable of doing so, the State has only to find a fit guardian, to provide for his remuneration out of the appropriate private source, and to see that he does not abuse his authority; but where both these conditions fail, the State must find the money as well as the supervision, and must in fact perform the whole duty, while assuming all the rights, of a parent.

Yet the parental analogy must not be pressed too far. The moral and legal duty of the natural parent depends upon the fact of his having brought the child into the world. It is fulfilled as regards the child, when the child is so treated that it is, or would be but for his own fault or exceptional ill-luck, worth his while to have been born—a somewhat vague criterion certainly, but the most precise that the case admits of. It is fulfilled towards society when the child is so brought up that he may be reasonably expected to do at least as much good as harm in the course of his life. The taxpayers, to whom the State must look for whatever money it proposes to spend on neglected children, have neither individually nor collectively any moral responsibility for the existence of these human derelicts; their duty, such as it is, arises in much the same way as in the case of the adult pauper, except that whereas the former is free (after a fashion) to accept or refuse the terms on which board and lodging are offered him, the child, because he is a child, must be treated as having accepted what the State considers to be a good bargain for him in the circumstances. The orphan, or quasi-orphan, child is for the time being more helpless than the destitute adult, though his possibilities of future usefulness and independence may be much greater. The brightest boy or girl under twelve cannot earn enough in the open labour-market to provide for his or her own immediate necessities, still less to buy the leisure and the instruction which are indispensable for permanent efficiency. Failing parental

care, it is quite worth the child's while to become a debtor to the State for all that is necessary to give him a fair start in life, even though this may imply subjection to regular discipline through all the period of immaturity, and some deduction from the earnings of manhood for gradual repayment of the debt. Conversely, it is worth the while of the State, representing the taxpayer, to take charge of the child as a present burden and possible future asset, rather than stand committed to the impossible task of protecting a guardianless and penniless orphan, roaming at large, against oppression by ill-disposed adults, and at the same time protecting society against his only too probable depredations.

In dealing with these "children of the State," a liberal rather than a cheese-paring policy will be found to answer best in the long-run. Well fed and well taught, but at the same time trained from the very first to regard themselves as debtors of the State, and to count it a point of honour to repay it in full in the event of their after-career proving successful, with interest at the rate commensurate with the risk taken by the State, it will be odd if their reimbursements do not, on the average of years, reduce the net loss to very insignificant proportions.

But lastly, no large and permanent undertaking, requiring the co-operation of many persons, and raising expectations in many quarters, is likely to command public confidence, unless on the one hand the discretion of its officers is known to be controlled by a body of fixed rules, and unless on the other hand these rules themselves are capable of being modified from time to time, in accordance with new needs and new lights, by the collective will of the association. But if this is true, more or less, of all joint undertakings, it must be pre-eminently applicable to an association whose primary business is the determination of disputes. Here, if anywhere, it is essential to take every possible precaution against caprice or partiality, and to save

as far as possible the necessity for actual recourse to the tribunals by making known beforehand the principles on which their awards will be based. Hence we require, as a reserve force behind all the other departments, but more particularly behind the judicial, a *legislative*, or *rule-making*, body, which will naturally be divided into (1) a supreme legislative assembly, corresponding to the shareholders voting personally or by proxy in the general meetings of a joint-stock company; and (2) an official department, charged with the duty of preparing measures for the consideration of the assembly, and promulgating in proper form such as receive its sanction. And inasmuch as confusion must necessarily result, unless the same collective will which determines what laws shall be enacted also maintains an effective control over those charged with their execution, it seems desirable that the function of electing, criticising, and if necessary dismissing or punishing the heads of all the eight above-mentioned departments should be exercised by the same supreme assembly to which we have assigned the authoritative, as distinguished from the technical and ministerial, part of the work of legislation. Our classification of the necessary operations, or departments, of a justice-enforcing association will therefore have to be completed by—

IX. A LEGISLATIVE DEPARTMENT,

corresponding to our present Parliamentary Counsel's office, but on a far more imposing scale; and

X. A SUPREME ASSEMBLY (OR COMBINATION OF ASSEMBLIES ¹) FOR LEGISLATION AND GENERAL CONTROL, which we may, if we please, call a Parliament.

¹ I do not share the common opinion in favour of two legislative assemblies constituted on different principles; but as this is confessedly a question of convenience, not of logical necessity, it need not be here discussed.

Note as to the Treatment of Paupers.—The method here suggested conforms in the main, but with two rather important differences, to the famous “principles of 1834.” The Commissioners on whose Report the Poor Law Amendment Act of that year was based, laid down “as the first and most indispensable of all conditions,” that the situation of the able-bodied pauper should be, really or apparently, less eligible than that of the independent labourer of the lowest class. The Report of the Poor Law Commission of 1907 explains how it was found impossible, with any regard to humanity or decency, to make the physical conditions of life in a government establishment worse than those of the poorest self-supporting labourer, and how, consequently, this test had been gradually whittled away.

Our system would maintain the principle of “less eligibility” with reference to one point only, but that the most important of all—personal liberty. It would do away with the “casuals” and the “ins and outs,” and would empower and require the authorities to detain any pauper, once admitted on his own application, until he could satisfy them that if discharged he would be likely to be self-supporting. But while detained, whether actually within the precincts of the institution or out on ticket of leave, there would be no pretence of making him physically less comfortable than the least comfortable free labourer. He would be required to do the tasks, and to submit to the training prescribed for him; but, on the other hand,—and here we come to the second important difference,—there would be no deliberate choosing of hard and uninteresting work, and no attempt to avoid competition with outside wage-earners. He would be encouraged in every way to make the most of himself, and credited with the value of his work in some way that would help towards his ultimate discharge; he would be set to his own trade if he had one capable of being carried on within the workhouse, or if not would

be taught whatever other trade might seem best suited to his capacity. It would not be necessary, as now, to prove absolute destitution before being admitted ; the only test would be willingness to surrender his liberty and to place his property, if any, at the disposal of the authorities. In this system outdoor relief, as the term is now used, would naturally find no place ; but cases might occur in which it might be safe and profitable to allow a pauper to live and work outside the house under some arrangement analogous to the convict's " ticket of leave."

CHAPTER III.

MINOR AND OPTIONAL STATE FUNCTIONS.

WE distinguished in the foregoing chapter ten necessary heads of State activity ; but in order to form a clear conception of the Libertarian State, or the State reduced to its lowest terms, it will be worth while to fill in the outline a little, and take note of some of the subsidiary apparatus which these principal functions will necessarily or naturally require.

I. STANDARDISATION.

The administration of civil justice implies almost of necessity the general enforcement of contracts. The great majority of disputed contracts are commercial ; and a large proportion of these, again, involve the determination of questions as to the number, weight, and dimensions of commodities. Only the most primitive forms of barter can dispense with conventional standards of lineal and rectangular measurement and of weight, and from these it is but a short step to a conventionally valued medium of exchange. Such conventions may, indeed, and sometimes do, originate with the traders themselves ; but they can have very little uniformity or stability until they have received the sanction of the tribunals on which their enforcement depends. These tribunals, again, as has been already pointed out, will not long command public confidence unless the main rules to which their decisions must conform are known

beforehand. Hence it will greatly facilitate the administration of justice if the association ultimately responsible for that duty—in other words, if the State—provides its own standards of weight, dimensions, and money, and instructs its tribunals to interpret all contracts with reference to these standards, unless it is conclusively proved that both the contracting parties meant something different. It must obviously conduce to the discouragement of fraud and the facilitation of honest business to have somewhere in public custody a brass rod or other material object which can be referred to as representing the length intended when a yard, or a foot, as the case may be, is spoken of, and to declare authoritatively what multiples or fractions of this yard or foot shall be taken to constitute a mile, an inch, and so forth.¹ From the linear standard, surface and cubic measurements can, of course, be deduced ; and there is also a well-known method of converting a cubic standard of capacity into one of weight. Still more essential, for just adjudication if for no other purpose, is provision by the State of a standard medium of exchange, consisting preferably of coined metal so marked as to guarantee both a certain weight and a certain degree of purity, and prohibition of all fraudulent imitations of the State coinage. At first sight it would appear that this ought to suffice, and that the ends of justice do not require, and hardly permit, the absolute prohibition of unofficial weights and measures and private coinage ; but in modern practice these are generally prohibited, and even on our own theory of State function it is possible to argue that the prevention of cheating is an object important enough to warrant compulsory uniformity. If private firms were allowed to issue coins stamped with their own names, and with such devices as clearly to distinguish

¹ See "Blackstone's Commentaries," vol. i. p. 275, ed. 1793, as to the attention given to this subject by the English Government from the earliest times.

them from the State coinage, justice would also require that creditors should be free to refuse these coins in payment unless they had expressly contracted to accept them. Now supposing the coinage which is legal tender to be of the same weight and fineness with that which is not, the prudent creditor will, of course, insist on having the former, which alone he can make sure of being able to use for discharge of his own debts. It is only when the unofficial coins are intrinsically the better that he will be tempted to accept them; and when that is the case it will not be long before, in accordance with Gresham's law, the good unofficial coins are melted down in order to get the advantage of their intrinsic value as bullion, either to be worked up as ornament or to be offered to the Government for recoinage. Thus it is hard to see where the profit of the honest private coiner can come in, and the presumption will be that private coining is meant to serve some fraudulent purpose. On the other hand, I see no reason why the State should claim a monopoly of issuing printed and transferable promises to pay a specified sum—in other words, why private banks should be restrained from issuing notes on their own responsibility.

II. REGISTRATION.

In the business of doing justice between man and man, as in every other business, the first thing is to ascertain the relevant facts. This goes without saying as regards each particular dispute that is brought before the tribunals. But it is not less important to secure beforehand all the information likely to be required for the determination of future disputes, or likely to assist the framing of suitable laws for the guidance of the tribunals and of the citizens generally. The machinery for what Bentham taught us to call "preappointed evidence" will include first of all the compulsory regis-

tration of births, deaths, and marriages, since without it litigation concerning inheritance, wills, capacity to contract, and so forth, must be extremely difficult, expensive, and unsatisfactory. So much is generally acknowledged and acted on by modern States ; what is less commonly insisted on is registration of rights to property. Considering that (as has been already remarked) land is at once the stage on which the whole drama of human life has to be played out, and the raw material out of which every form of wealth has to be extracted ; considering also that all private exclusive rights over land have to be reconciled somehow with the common right of all mankind ; it would seem to be one of the first and most obvious duties of a justice-enforcing association to establish and keep up to date, in a form readily accessible to its own officials and to the public, a complete record of all public and private rights over every square yard of land (whether or not covered by water) within its jurisdiction. In those parts of British India where the State exercises directly and effectively the functions of a landlord, there is such a record—how far accessible to the general public I do not know. But, since the “ Domesday Book ” of William the Conqueror, no such survey seems to have been attempted in England.¹

III. STATISTICAL INQUIRIES.

Again, inasmuch as armaments are required for the enforcement of justice, and taxes for the support of armaments as well as for many other purposes, it is eminently desirable that the Government should keep itself as well informed as possible concerning both the number and the taxable capacity of its subjects. On

¹ Nor is “ Domesday Book ” itself exactly the sort of survey here intended, having been compiled with a fiscal rather than a judicial aim.

the principle that all State coercion is justifiable which tends to prevent worse aggression by individuals, any person refusing to answer questions bearing on such matters may fairly be said to forfeit his claim to State protection, just as much as if he had refused to pay his fair proportion of rates and taxes. The important thing to bear in mind, in the interest both of personal and of economic freedom, is that all statistical inquiries, involving either compulsion to answer questions or expenditure of compulsorily levied taxes, should be rigidly limited to points on which accurate information is manifestly necessary to the efficient discharge of some recognised governmental function. Whether, for instance, a religious census should be taken will depend primarily on whether it is proposed to make any difference in a person's rights or duties according to the creed that he happens to profess. In England, broadly speaking, we make no such difference, and therefore any official inquiry on the subject may reasonably be resented as an impertinence. In India, on the other hand, where difference of creed involves difference of usage in some very important matters of which the civil tribunals cannot refuse to take cognisance, and where it has consequently been thought necessary to apply quite different rules of law to Hindus and to Muhammadans respectively, to question a man as to his religion is in effect to ask him by what law he expects to be governed, and the taking of a religious census is strictly pertinent to the business of administration. We shall have to consider in a later chapter the whole subject of the relations between Church and State.

IV. LAND-SURVEYING AND HYDROGRAPHY.

If, as we were just now insisting, there ought to be a record of rights affecting every bit of land under the control of the State, this presupposes accurate measure-

ment and delineation of the land itself ; and this alone would be a sufficient answer to any ultra-individualist who might be disposed to object to Ordnance maps and Admiralty charts up to the three-mile limit. But in truth these same maps and charts are hardly less necessary for police, for military, and for general administrative purposes. The need is not quite so self-evident for officially provided ocean charts and maps of foreign countries. It is a question of degree, depending partly on the power and wealth of the particular State in question, partly on the extent of its foreign trade, and partly on the likelihood of its having to conduct military operations in this or that quarter. It is hard to set any limits to what may be legitimate in the case of a Power like England, to which the policing of all the great trade and ocean routes is a matter of vital necessity ; yet even in her case I am disposed to think that the line might usefully have been drawn at the Arctic and Antarctic Circles. Polar exploration is doubtless extremely interesting, yet it is hard to see how it can assist the work of a justice-enforcing association. There is no industry or commerce needing protection, nor are the Eskimos dangerous barbarians, needing to be brought under control lest they should sally forth and prey upon more fortunate regions. On the other hand, every Government that does well its proper work is powerfully, though indirectly, promoting Polar discovery. Where freedom is best protected, there will wealth be most likely to accumulate in the hands best fitted to make a wise and public-spirited use of it ; nor is there anything in the business of an Arctic expedition that is at all beyond the reach of private enterprise in a wealthy and intelligent community. The question, however, is only important as one of principle ; the actual public expenditure under this head never has been, and is never likely to be, very serious.

V. GOVERNMENT WORKSHOPS.

The magnitude of the operations which the Government is obliged to undertake, relatively to those managed by individuals or voluntary associations, will be greater or less according to the preponderance of pacific or quarrelsome propensities in the community in question and in its neighbours. In very backward countries no protection at all is to be had except upon terms of servile submission to somebody; and there no industry is carried on, and no information collected, unless under the orders, and for the benefit, of the ruling potentate, who from the instinct of self-preservation will be chiefly interested in such industry and research as make for military efficiency.¹ In the most free and peaceful modern communities the Government is still the largest single employer of labour, but not nearly so large as all the others put together; the materials and instruments that it requires for the due discharge of its proper functions are to a great extent things that are being produced in large quantities to meet the demands of private customers, so that it has only to go purse in hand into the open market, like any other purchaser. Yet there must always be some things for which a government cannot safely depend on the open market—ships of war, for instance, torpedoes, and explosives generally. Unless the Government has its own dockyards and its own magazines, the safety of the nation may depend at any moment on the caprice or self-interest of a private firm.

VI. SCIENTIFIC AND HISTORICAL RESEARCH.

And as with material, so with intellectual requirements. The Government has got to know certain things in

¹ The Autobiography of the late Amir Abdurrahman of Afghanistan throws some interesting sidelights on this point.

order to perform its proper duty in an effective manner. The demand for that particular sort of knowledge on the part of non-official persons may, or may not, suffice, together with that of the Government itself, to encourage the necessary labours of research and publication. If it does, the department concerned has only to buy the books when published at the market price ; if not, the State will be fully justified in employing its own investigators at the public cost. Probably the close connection of astronomy with navigation, and so with the duties of His Majesty's Navy, may justify the permanent appointment of an Astronomer Royal ; and still less disputable is the necessity for a Record Office, for the preservation of all documents that seem at all likely to assist successive Governments in the performance of their own tasks by explaining the action of their predecessors. The new National Physical Laboratory seems to be removed just one step further from the business of defining and enforcing justice. The experiments and researches carried on there are, of course, helpful to Government, but not more so than to a multitude of private firms and individuals who are, very properly, charged fees for the researches conducted at their request, and who might, for all that appears, be charged at a rate that would, with the payments on account of work done for the Government, render the institution self-supporting.

VII. NATIONAL AND MUNICIPAL TRADING.

Whatever the object for which people agree to co-operate, the means employed must include the collective levying and spending of money, and the acquisition of property in some form, though it be only office furniture and stationery. And whatever property an association acquires, the possible uses thereof will probably not be exhausted by the special purpose for which it was bought.

If it is a Railway Company, there will be surplus lands to be sold or let. If it is a Gas Company, there will be residual products to be sold. If it is a church or charitable society, some amateur trading in the shape of bazaars and entertainments is almost invariably resorted to for recruitment of its finances. How much more, when the proper business of the association is so vast and varied as that described in the preceding chapters, must we expect to find by-products to be disposed of, and openings for safe and profitable undertakings, to neglect which would be bad business! We have already noticed this natural extension of State functions with regard to road-making and hydrography; and next to these perhaps the most obvious example is—

The Post Office.—All Governments must, in order to fulfil their primary purpose, be anxious to make the most effective arrangements possible for rapid communication with their agents at a distance. Being responsible for that protective organisation which must in the nature of things precede any considerable development of private commercial enterprise, they cannot wait for private enterprise to supply them with the necessary machinery. It is as necessary for them to have their own mail-bags, their own vehicles and vessels to carry those mail-bags, and their own confidential servants in charge of both, as to have their own soldiers and police. And having provided for their own needs a postal service more swift and regular, and much more costly, than any private citizens would at the time have been able to organise for their private correspondence, it was only natural that the latter should wish to avail themselves of this public establishment, and that the Government should find it profitable to carry private letters and parcels with their own at a certain charge, and enlarge their postal establishment accordingly. This bargain, like the other, might be more beneficial to the one party or the other according to the

precise terms agreed upon, but could not fail to be in some degree beneficial to both, *so long as both parties were free agents*. Unfortunately, in this country the private citizen has never been a free agent in this matter. By the same Act of Parliament which established for the first time a General Post Office for England, Ireland, and Scotland, with fixed prices for the carriage of private letters as well as for the private hiring of post-horses, all other persons were forbidden to "set up or employ any foot-posts, horse-posts, or packet-boats." The policy of the Act is sufficiently explained by its date, 1656, the year in which Cromwell was preparing to assume all of kingship but the name, and was confronted on every side by Royalist, Republican, and anarchical conspiracies; and it is, moreover, explicitly avowed in the preamble, which sets forth that this General Post Office was "the best means, not only to maintain a constant intercourse of trade and commerce, but also to convey the public despatches and to *discover and prevent many dangerous and wicked designs which have been and are daily contrived against the peace and welfare of this commonwealth*." The monopoly once justified by extreme public danger has been continued to this day so far as the carriage of letters is concerned, and is defended in these tranquil times by a wholly different line of argument. It is said that if free competition were permitted the uniform penny rate could not be maintained without loss to the Treasury, because private enterprise would secure the cream of the business by underselling the Government in the more populous and wealthy districts, leaving to the latter the unprofitable duty of serving the remoter and poorer localities. The answer to this is that people who choose to live in scattered localities have no more right to be saved from the consequent inconvenience at the expense of the dwellers in cities than have the latter to be saved from the inconvenience of overcrowding

at the expense of the former. Great as is the debt that the nation owes to Rowland Hill, it must be remembered that the strenuous resistance which it required so much pertinacity to overcome would have been impossible had not the Government been firmly entrenched in their monopoly. In the course of the two preceding centuries private enterprise had repeatedly shown itself not only willing but able to meet the demand for a cheaper and better postal service, but all such attempts had been ruthlessly crushed in the interest of the public revenue, or more truly in the interest of the particular holder of the monopoly, which was usually farmed out by the Government to some person of influence. Had a reformer of equal genius and persistency pressed for the abolition of the Post Office monopoly, the improvement would probably have been more rapid than it actually has been. As it is, the most powerful leverage at the disposal of Rowland Hill for accomplishing his reforms was supplied by the success and popularity of certain unauthorised postal ventures, and by the expense and trouble to which the Government was put in its efforts to suppress them.¹

The other half of the old seventeenth-century Post Office monopoly, namely, the providing of post-horses for the conveyance of passengers, survived on the Continent long after its abandonment in England, and may seem at first sight to be still surviving in principle wherever the railway system is under the exclusive control of the State, as, for instance, in Prussia and Belgium. The cases are not, however, really on all fours. Ordinary roads can be, and are, so constructed as to accommodate simultaneously all kinds of traffic, from the pedestrian and the perambulator to the motor-car, provided that proper regulations are made and enforced for the prevention of collisions. Here a monopoly of locomotive

¹ See the "British Encyclopædia," s.v. *Post Office*.

agencies, being unnecessary, is wrong ; and it is matter of undisputed history that the free competition in post-horses and stage-coaches, which prevailed in England from early in the eighteenth century, gave us a conspicuous advantage over the Continent in the matter of speed and comfort in travelling, down to the time when the horse was superseded by the steam-engine, and the macadamised highway by the iron railroad. But with these latter it was very soon discovered that the roadway and the vehicle were inseparable, and that monopoly of the one carried with it of necessity monopoly of the other. The earliest English Railway Acts required the Company to permit any person to put his own engine and carriages on the rails, and to run them in competition with those of the Company, but for obvious reasons the exercise of this right proved so inconvenient that the clause became a dead letter and was not reproduced in subsequent Acts. The only possible competition is that between rival lines joining the same termini by different routes, or else the initial competition between rival companies seeking authority to construct the only line required on a given route. For some authority from the State there must always be, before a railway line of any considerable length can be constructed. Even in the very unlikely event of a company managing to buy up without compulsion all the privately owned land on a projected route of a hundred miles or more, there would be public roads to be traversed, and public rivers to be bridged. Here, therefore, we come upon a question, not raised by the Post Office monopoly, as to how far the fact, that the nature of an undertaking renders Government aid necessary in the shape of compulsory powers and exclusion of competition, justifies the State in taking that monopoly into its own hands, in order to secure the anticipated profits for the public at large, instead of allowing them to be reaped by certain favoured individuals.

The question is raised in a still more acute form with regard to the supply of gas and water in towns, because the laying of pipes in all directions under the public streets, with periodical reopening of the soil for repairs, must cause so much inconvenience at the best that no public authority would dream of multiplying the nuisance by giving the same permission to two or more rival companies ; whereas the existence of a railway line connecting A with Z through B and C does not necessarily prevent Parliament from sanctioning another line connecting the same extreme points *via* D and E, or *via* X and Y, and that part of the travelling public which is interested in the through traffic may quite conceivably benefit by the competition.

A very different species of necessary monopoly is that of over-sea trade with countries outside the range of full international comity, where isolated traders could neither expect adequate protection from the native rulers, nor could the ill-disposed among them be prevented from compromising the reputation of their countrymen by outrages on the native population. Such was the rationale of the monopolies granted in former times to the Turkey Company, the Hudson Bay Company, and (most famous of all) the East India Company ; also of the modern Chartered Companies operating in East, West, and South Africa. Such charters do not merely confer the right of trading, or of carrying on industrial operations which would be public or private nuisances unless specially authorised ; they involve the devolution on a body of persons associated primarily for purposes of private gain, of some of the essential attributes of the State itself, civil and criminal jurisdiction, and even in some cases the power of making peace or war. They might harmonise well enough with the ideas of the seventeenth century, but their revival at the end of the nineteenth can hardly be said to have

done much for peace and good order in the Dark Continent.¹ At all events, those who think of the State as before all things a justice-enforcing association will also be disposed to hold, for reasons set forth in our first chapter, that the control over this particular monopoly cannot be too direct and complete. Profit-making as an accessory to government may sometimes be right enough; but not political power as an accessory to profit-making.

For the other cases referred to, it is hardly possible either to deduce any hard and fast rule from our primary principles, or to confirm it by any conclusive experience. It must be determined in each case upon a balance of convenience, whether the public interest will be best served by direct public management, or by bargaining with a company to take all the risks of the undertaking and so much of the possible profit as will make it worth their while to do so. All that can be laid down generally is (1) that the more speculative an undertaking, the more desirable it is that the money of willing shareholders should be risked upon it rather than that of possibly unwilling taxpayers; and (2) that there ought to be a very clear balance of other advantages in order to outweigh the political danger attending every increase in the number of officials relatively to the non-official population.

State Railways.—The particular case of State railways may, however, be regarded from another point of view altogether, namely, the strategic. The policy of Prussia

¹ I do not question the present prosperity of Northern Nigeria, British East Africa, and Rhodesia, in all of which the initial stages of political as well as industrial development were entrusted to a Chartered Company, and in all of which the political functions were taken over (wholly or partially) after a very few years by the Imperial Government; but as regards Rhodesia at all events I do very much question whether the two Matabele wars, the Jameson Raid, and the great Boer War were not too high a price to pay for somewhat accelerating a result which might have been achieved a little later by more legitimate methods.

in this matter was probably influenced even more by her military necessities than by the prospect of financial advantage to the Government, though her State railways do in point of fact show a very considerable profit. Having to be in constant readiness for a great land war on one side or other of her exposed frontiers, it was of vital importance to her to have the means of concentrating troops as rapidly as possible on any exposed point. To us, on the other hand, as an insular, maritime, and predominantly trading people, the chief thing to be aimed at in the matter of internal communications is to secure a maximum of individual convenience at a minimum of cost. Our best security—next to gaining the goodwill of other nations—against either invasion of our shores or interruption of our commerce, lies in an all-powerful navy; the possibility of maintaining such a navy depends upon the general prosperity of our people; and so far as that general prosperity depends on locomotive facilities, it is at least a tenable opinion that this is more likely to be promoted by joint-stock companies primarily concerned with the business of earning a dividend, than by a Government department, professedly animated by wider views of the public good, but actually under much stronger temptation to save itself trouble by adherence to some sleepy routine, or else to sacrifice public convenience to some real or imaginary strategic advantage. I say “real or imaginary,” because I conceive that the probable course of a defensive campaign, to be carried on after we had lost the command of the sea, would be far more difficult to forecast than the course of any land war between contiguous continental States, while the chance of such a campaign being carried on at all would be rather remote.

The Belgian State Railways are sometimes held up to our admiration, and it may be said that there, at all events, strategic considerations can hardly count for

much.¹ But, on the other hand, the conditions of both physical and political geography are so exceptionally favourable that it would be difficult for railway-making to be other than remunerative, whether under public or under private management. The most profitable part is probably the through traffic between England and the Continent, and between France and Germany ; and for this purpose one can easily understand that a centralised administration would be the most suitable.

One of the most favourable examples of State management of railways is that of British India. The strategic and political reasons for State action were here very strong ; and the general political reason for minimising such action did not apply, because, rightly or wrongly, the government of that great dependency has always been, and still is,² avowedly despotic. Lord Morley, in his speech on the Indian Budget of 1906, reported that down to 1896 there had been a financial loss to the State under this head of rather less than a million ; then the loss fell gradually, till in 1900 there was for the first time a small profit, which in 1905 had grown to two millions. The policy pursued seems, therefore, to have been justified by the results, even apart from the great social benefit of being able to bring food rapidly to the districts affected in time of famine, and apart from the

¹ Since the above was written, however, I have noticed that, according to M. Le Roy Beaulieu, political, if not exactly strategic, considerations did count for a good deal at the moment when the decision in favour of State management was taken. The revolt from Holland had only just been accomplished, and there was still an Orangist party, stronger in wealth than in numbers, who might, it was feared, get a dangerous hold on the railway system if it were left to private initiative ("L'État Moderne," p. 196).

² The representative element recently introduced into the legislative and executive councils is too weak at present to impair the substantial truth of this statement. The transfer of the whole *personnel* of the State railways to the service of some private company would probably not affect a single vote in the new electorates.

economy of military and administrative power due to more rapid communication. Lord Morley offered this record as a "present to the Socialists," which only shows the close connection between Socialism and Paternalism. If the social conditions of India had been such as to make Home Rule and democracy practicable, those same conditions would have encouraged railway-making by joint-stock companies, and the consequent increase in the taxable wealth of the population would have more than compensated for the loss of that two million profit.¹

The case for municipal tram-cars is in some respects stronger, in other respects less strong, than that for national railways. The strategic aspect of the problem disappears, and the business has rather less of the character of a necessary monopoly. For although the public authorities will, of course, not allow two competitive lines of rail to be laid down in the same streets, yet the competition with other means of transport, such as the horse-omnibus, the motor-bus, the bicycle, and lastly the human bone and sinew, may be generally relied on to keep the fares of a private tram-car company down to a reasonable figure. On the other hand, the initial outlay, and the consequent risk of loss to the ratepayers, are very much less than what the long-distance State railway may involve to the general taxpayer; while the fact that the utility and remunerativeness of a tram-line will be very materially affected by every change in municipal policy with regard to the direction and width of thoroughfares, tells to some extent in favour of keeping the whole tram-service in municipal hands, so as to prevent the growth of vested interests which would stand in the way of desirable changes and reconstructions.

No such consideration can be urged in favour of

¹ For an admirable presentation of the case against State management of railways, see Le Roy Beaulieu, "L'État Moderne," Book iv. chaps. iv. and v.

municipal steamers. To keep these going at a loss would be, as already explained, an injustice to all ratepayers who do not want to use them. The likelihood of their being carried on at a profit where private enterprise has either declined the task or failed, is extremely small, except on one supposition, namely, that the failure of private enterprise was due to the municipal authorities neglecting their unquestionable duty in regard to keeping the river itself and the landing-places in proper order. In that case it is no doubt possible that the starting of municipal steamers might coincide with reforms in river management, and that in this way a success might be achieved which would have been impossible under the old conditions. But success so achieved would reflect more discredit on the past than credit on the present municipal management, and would prove nothing as to the superiority of the latter to private enterprise in this particular field.

What of municipal housing? There can be no question here of necessary monopoly, so far as the buildings, apart from the site, are concerned. We assume, for reasons already indicated, that in our State no permanent appropriation of the land itself will ever be permitted; and that the central and local authorities will have settled between them, before the builder comes on the scene, (1) what spaces shall be built upon, (2) what length of building lease shall be granted, (3) what sanitary conditions every building must satisfy, and (4) what limit shall be placed on the number of people occupying it, in order that it may not be a public nuisance. This done, free competition will best determine (1) what ground-rent any builder will pay for the right to build houses satisfying these conditions, and (2) what rents the builder will be able to obtain from his tenants. But although there is not here any monopoly requiring to be municipalised in the public interest, I see no objection in principle to the local authority

building on its own account, provided that it competes fairly with the private builder ; which means that it must not impose any burden, present or prospective, on the ratepayer. Hence the importance, in the London County Council housing schemes, of the provisions for repayment of the loans within a reasonable time, and for the charging of rents sufficiently high to provide a sinking fund in addition to keeping down the yearly interest on the borrowed capital. To relax these provisions would be to subsidise the consumers of a particular commodity at the expense of non-consumers. Such a transaction would be indefensible in point of justice even if the class really benefited were the poor, and the class really burdened the comparatively rich ; but in all probability the actual occupants of the artificially cheapened dwellings would be compelled by competition to accept proportionately lower wages, and thus to pass on the intended benefit to their employers. Nor would even the direct benefit of cheaper house accommodation be necessarily permanent, inasmuch as private capital would gradually be driven out of the building trade by the unfair conditions of the competition with the local authority, on which, therefore, the whole burden of meeting the demand would ultimately rest, and which would thenceforth be relieved entirely from the stimulus of commercial competition. The only way to obtain housing reform would be to make it an election cry¹; with one party clamouring for low rents and the other for low rates, the material for strife would be, to say the least, not less abundant than before.

It so happens that the borough in which I reside has been held up by at least one recent writer¹ as an example of successful municipal housing. It is shown that the cottages built by the corporation in 1897 (of course with capital borrowed on the security of future rates) are at

¹ See " Riches and Poverty," by L. G. Chiozza Money (1905), p. 216.

the present time fully let at rents which are sufficient to cover the cost of repairs, the interest on the loan, and a proportionate instalment towards repayment of the capital; and it is anticipated that at the end of forty-two years from the aforesaid date the ratepayers will find themselves the fortunate possessors of an unencumbered estate worth £35,000, and producing a net annual income of over £1600. It may be so; but it may quite as possibly happen that before 1939 the fashion will have changed, or the class of tenant that now pays the required rent will have drifted elsewhere. Against the anticipations of the promoters of the Richmond housing scheme must be set that of Mr. H. G. Wells, that the present century will witness the diffusion of Greater London over the whole southern half of England.

Before quitting this branch of the subject, there are two points on which it may be desirable to guard against misunderstanding—

1. The principle which has been here admitted, in conformity with a well-known passage in Mill's "Political Economy," that concerns which are necessarily monopolies should be kept in public hands, or leased out under stringent conditions to prevent excessive profit, is apt to be extended by Socialistic writers so as to cover what are merely *de facto* monopolies; one particular person or company, or possibly a combination of companies, having secured the command of the market by doing the thing cheaper or better than any one else, unaided by any compulsory powers or exclusive privileges. It is argued that, because free competition leads in many cases to the larger businesses underselling and swallowing the smaller, each absorption leading to an economy of power and consequently to an increase of profits for the lucky survivor, therefore the same profit will accrue to the State from swallowing that survivor. But this by no means follows. So long as the trade is in private hands, there is potential, even if there is no actual, competition,

and the consumer gets the full benefit thereof—that is to say, the directors of the giant company, or trust, can only hope to retain their monopoly by the same close attention to the wishes of their customers by which they acquired it ; any considerable slackening of their efforts will leave an opening for revival of actual competition. Largeness of scale is only one condition of success, and will only render failure more certain and disastrous unless the organising ability at the top is kept up to the mark. Where the State or a municipality takes over the concern and makes it a real monopoly, the stimulus of industrial competition is lost altogether, only to be replaced, if at all, by the far less effective, and far less wholesome, stimulus of political competition.

2. The other caution required is against extending beyond its just limits the principle that when the State competes against private traders its scale should not be weighted at the expense of the taxpayer. This principle is sometimes invoked against schemes for turning the labour of prisoners and paupers to the best account, on the ground of unfairness to the honest and independent workman. What is forgotten by such objectors is that the underselling is here effected, not at the expense of the taxpayer, but for his relief. Those who must, for the public security, be detained, and therefore maintained,¹ at the public expense, ought, in justice to the taxpayer, to be so employed as to come as near as possible to replacing out of their earnings the cost of their keep and custody. They ought also, in justice to those whose security would be imperilled by their release (a class not necessarily co-extensive with the taxpayers), to be reformed as far as possible before being released ; and from this point of view that employment will be the most suitable which will best develop their industrial

¹ It has been shown elsewhere that on our theory no pauper ought to be maintained out of the rates except upon terms of entire surrender of his liberty.

capacity and stimulate their industrial ambition, and those employments will be the worst which, like stone-breaking or oakum-picking (not to speak of the treadmill), combine the maximum of degradation with the minimum of appeal to the intelligence. The honest and independent wage-earner is apt to suffer even more than the more comfortable classes from the aggressions of the criminal and the importunities of the pauper ; and any loss that he may incur through the competition of prison and workhouse labour will be more than made up to him by their seclusion in the first place, and in the next place by their reformation.

POSTSCRIPT ON THE PROPOSED NATIONALISATION OF CANALS.

Since Chapter III. was written, public interest in the subject of inland waterways has been revived by the publication of the final Report of the Royal Commission on Canals and Inland Navigation, summarised and discussed in *The Times* of 29th December 1909.

The Report itself, signed by twelve out of the nineteen Commissioners without reservation, and by four others with reservations, recommends State action in imitation of France, Germany, and Belgium. The existing canals having been constructed almost entirely by private enterprise, and a large portion of them having subsequently come under the control of the railway companies, also private undertakings, it certainly required some boldness to propose the nationalisation of waterways without at the same time nationalising the railways. This is, however, in effect the course recommended, though the process is to be a gradual one. A beginning is to be made by constituting a central authority which is to acquire certain of the existing waterways, and so to improve them as to make a complete system of

water transport linking the mining and industrial districts of the Midlands with the Thames, the Humber, and the Severn. Against this proposal the dissentient Commissioners urged various objections, the most important of which was that the predecessors of the present Government left private enterprise to develop at enormous cost a railway system which was to compete with the old, inadequate, and most unsatisfactory canal system, and that it would be most unfair now to afford State aid to the canals in order to enable them to compete with the unaided railways. There is surely much force in this objection, and it is difficult to escape the conclusion that either both canals and railways should be nationalised or neither.

The example of France and Germany is quoted in favour of the former alternative. But the conditions in both countries are very different from ours, as the dissentient Commissioners did not fail to point out. In both countries the question was already settled in principle before the great revival of interest in water communication took place. In Germany the railways were entirely, and in France very largely, owned by the State; moreover, both countries started with natural waterways far superior to ours; great rivers navigable far inland for vessels of considerable size, such as the Loire and the Garonne with their tributaries in France, and the Rhine, Elbe, Oder, and Vistula in Germany, only requiring to be improved and kept in order, and to be linked together by comparatively unimportant canals. Navigable rivers being there, as here and elsewhere, *publici juris* to begin with, and the canals being mere accessories to the rivers, no other course than State management was likely to suggest itself. When, as in Germany, the railways were also State-owned, the Government was not troubled by any question of competition. In France, where some of the railways are still owned by private companies, it was found

necessary, in order to attract a remunerative amount of traffic to the new waterways, to protect these artificially against the competition of the more rapid and convenient mode of transit by fixing a minimum rate for railway freights, and indemnifying the railways for this interference with their finance by guaranteeing a minimum dividend.

In England the mileage of open navigable rivers is very small as compared with that of canals and canalised rivers. Few of them can accommodate vessels of anything like the size to be seen on the continental waterways. This is a very material point, inasmuch as the only advantage which inland water-carriage has over railways is in respect of goods whose bulk is great in proportion to their value. The small scale of our canals and rivers affects the problem in another way, by making it more difficult to treat them as public highways on which every one can carry his own goods in his own boats, and more natural to assimilate them to railways, where the permanent way, the rails, and the vehicles are all owned and used by the same body. One canal-owning railway does actually carry goods in its own barges, instead of taking toll from other barge-owners, and it seems a reasonable conjecture that private enterprise, if unhampered by parliamentary obstruction, and if relieved from the dread of approaching extinction, would tend towards the general adoption of this practice, and also perhaps towards general amalgamation of canals with railway companies. If, on the other hand, both railways and canals are nationalised, the State will probably find it convenient to assimilate the canals and canalised rivers to the railways, by claiming for itself a monopoly of inland water-carriage, at all events where the waterways are too narrow to accommodate a large and varied traffic. I have already expressed the opinion, that in a country like England, where strategic considerations are of less importance

than in France or Germany, the balance of advantage is rather against nationalisation of railways and on the side of private enterprise, controlled by the State in the interest of the public safety, but not hampered as now by heavy initial law expenses, nor by a vexatious passenger duty, nor by compulsion to supply unremunerative workmen's trains; and I do not see that the balance is materially affected either way when we introduce into the problem this new factor of water-carriage.

CHAPTER IV.

IS IT THE DUTY OF THE STATE TO EDUCATE THE CHILDREN OF THE POOR ?

It was admitted in Chapter II. that in the case of guardianless children a justice-enforcing association, resolved to its whole duty as such, would find itself involved, almost of necessity, in certain limited educational responsibilities.

Again, prison discipline certainly ought to be reformatory in its aim, and it may be said that moral reform implies education of some sort. But the best form of education for the criminal will be setting him to useful industry, and crediting him with the produce thereof as a *per contra* to the expense that his wrongdoing has caused to the community.

And thirdly, if public servants possessing special aptitudes are required, the Government may not always be able to purchase these ready-made in the open market, and may therefore be obliged to provide certain professional training-schools of its own, *e.g.* law schools, schools of forestry, gunnery and torpedo schools, and so forth. Each of these forms of State-provided instruction has its own separate justification, and by no means implies any such general principle as that it is the business of the State to constitute itself the educator of the community. It is here that the most important divergence arises between our theory of the State and the actually prevailing practice of modern Governments. All of them without exception provide

out of the taxes a more or less complete educational system, either competing with or superseding voluntary enterprise; and where the State competes without regard to profit, it seldom fails in the end to supersede. Can this universal practice be made to square with our theory? Or if not, must we conclude that our theory is unsound?

The first question is not to be answered off-hand. It is true that some of the popular arguments for State education presuppose a radically different theory from ours, but there are one or two, and those not the least plausible, which purport to be in harmony with it, and would really be so if the facts were as alleged.

Thus it has been argued by many thinkers, from Condorcet to Dr. Macnamara, that since ignorance is a fruitful parent of crime, the duty of dispelling it must fall within the province of the body whose function it is to repress crime.

This is a sound argument if, and only if, it can be shown that a given amount of money will go further towards repression of crime when devoted to the support of schools than it would if applied directly to the improvement of the police, of the judiciary, or of the law-making and law-promulgating machinery. That the account should work out in this way is unlikely in the extreme, if we are speaking of such instruction as is now imparted in the public elementary schools of England and America. In London, for instance, a large majority of the scholars who now receive instruction at the public expense, or certainly those on whom the most expensive part of the instruction is bestowed, are the children of decent parents who would in any case have trained them to earn an honest living and to give no trouble to the police—to say nothing of those who must have been positively deteriorated by enforced contact in the schools with the children of degraded parents. The tendency of our educational authorities has generally been to take most

pride in, and to spend most money on, those branches of their work which are most remote from the business of preventing crime. It is in the industrial school, the training-ship, and the reformatory that the real fight for the soul of the budding criminal is waged ; but these do not need for their justification any general theory of State education, and have in English practice, until quite recently, remained outside the province of the Education Department.

Desperate attempts have been made from time to time to prove by statistics a close causal connection between increase of State aid to popular education and decrease of crime. All such attempts must necessarily fail until a time and place can be found at which State education advanced concurrently with diminution of crime while police reform and law reform stood still ; not to speak of various other collateral influences, such as economic prosperity and the religious movements of the time. Certainly no such test is available for modern England. Whether we take the period from 1832 to 1870, in which parliamentary grants expanded from £20,000 to half a million, or that from 1870 to 1908, which has added rate aid to State aid, and run up the total to something like thirty millions, we find that reforms tending to the detection and prevention of crime, and others tending to diminish the principal temptations to crime, have been going on concurrently, and have preceded every conspicuous decrease of crime. In 1832 there was scarcely anything to praise in English administration of justice beyond the negative merit of comparative freedom from the cruelty, rapacity, and corruption practised under continental despotisms ; for all purposes of positive assistance to the weak against the strong, to the honest against the dishonest, it is difficult to imagine anything more inefficient. It was quite common for a judge at the assizes to be presented with white gloves while the whole countryside was under

a reign of terror, and while the few thieves in prison were confessing that their takings before they were captured were far more in number than they could possibly remember. This was not because of the ignorance of the masses, dense as that may have been, but because their betters in Parliament had never troubled themselves to apply the most elementary common sense to the business of law-making.

Between 1832 and 1870—

- the new Poor Law stopped the system which made idleness more profitable than industry ;

- the worst absurdities in the law of evidence were corrected ;

- capital punishment was restricted practically to murder, and other punishments were so far humanised as to render juries less unwilling to convict ;

- the old unpaid and untrained magistracy was re-inforced by stipendiary magistrates in populous places ;

- the useless old parish constabulary was superseded by an efficient police force ;

- a fair commencement was made in the separate treatment of juvenile offenders ;

- the Factory Acts had rescued many thousands of children from the overwork which rendered every sort of schooling impossible ;

- and lastly, the series of measures creating and enlarging the jurisdiction of our modern County Courts struck at the root of much violence and dishonesty, and greatly relieved the strain on our criminal tribunals by bringing civil justice for the first time within reach of the masses without intolerable delay and expense.

Between 1870 and 1905—

- the criminal tribunals, on which, together with the police, the main brunt of the conflict with the

anti-social elements in the community must always rest, have had their powers greatly enlarged, and their efficiency increased, notably by the Summary Jurisdiction Act, 1879 ;

while the steady flow of population from the rural into the urban districts has increased the importance of trained stipendiary magistrates, numerous enactments have thrown upon these functionaries a large amount of quasi-civil business, which they dispose of even more cheaply and promptly than the County Courts, though these also dispense justice at less cost to the parties and more to the nation than in the former period ;

the mixture, in prison, of young first offenders with hardened criminals, which used to be a most fruitful source of crime, has been greatly restricted if not absolutely prevented, and various measures, culminating in the Children's Act of 1908, have tended, altogether apart from the Education Acts, to make it less easy for children of the poor to drift, unguarded and unwarned, into a career of habitual crime.

When to these directly crime-preventing law-reforms we add the improvements effected in almost every branch of national and local administration, and the zeal for social improvement that has found vent through innumerable unofficial channels, the wonder surely is, not that crime has decreased, but that the decrease is not much greater. I am not going to suggest, nor do I believe, that the sort of instruction given in the State schools has in itself more influence for evil than for good, though there are critics who would go even that length ;¹ but

¹ See, for instance, a pamphlet entitled " Our Abominable Schools," by James Philpott, a certificated schoolmaster (Newcastle-on-Tyne, 1905).

I do venture to suggest (1) that the heavy taxation occasioned by it must have a depressing and demoralising effect on the taxpayer, and must increase the difficulty of finding money for objects of greater urgency ; and (2) that the amount of educational zeal nipped in the bud by the hopelessness of competing against the State is in all probability very great.

The question is not whether the schoolmaster or the police constable is in the long-run the mightiest agent for promoting security of person and property, but whether the interference of the State with the natural development of educational agencies adds to or detracts from their moralising force ; and if the former, whether the addition is sufficiently great to compensate for the diversion of energy from other useful social activities—that is, either from the police and the judiciary if the total taxation remains the same, or from the various pursuits of the individual taxpayers if the educational expenditure comes as an additional burden, the cost of the other Government departments remaining undiminished.

With or without State intervention, we shall have the schoolmaster always with us, by the normal action and reaction of supply and demand, so long as the general administration remains sufficiently good to secure a fair field for this and other peaceful activities ; but we cannot have the police constable unless he is appointed, paid, and controlled by the State. The burden of proof is on him who asserts that the policeman, and all that he represents, could be dispensed with if the same amount of money were devoted to State education, universal, compulsory, and gratuitous. I know of no facts tending in the slightest degree to support any such conclusion.

Alleged Danger from an Ignorant Electorate.—Another plea for tax-supported schools is that embodied in the formula, “ We must educate our masters.” In this

saying, again, there lurks an ounce of truth under a ton of fallacy. The ounce of truth is that democratic institutions cannot be expected to work well, hardly to work at all, without a tolerably high average of virtue and intelligence.¹ The fallacy lies in assuming that the best or the only way of raising this average is State intervention. If there is any truth in the common saying, that a nation generally gets the sort of government it deserves, it follows that there is little likelihood, in any country where the moral average is at present dangerously low, of the set of the men actually in power being suitable agents for raising it up to the level at which democracy will be safe. They are quite as likely to be among the worst as among the best; and even if they do happen to be among the best, their educational policy will seldom reflect their best mind, deflected as it must constantly be by party considerations. For them to interfere forcibly with the things of the mind; for them to override the wishes of parents on the one hand and of would-be educators on the other, dictating to the former where and how their children must be taught, and prescribing to the latter the channels through which alone their money or their personal teaching power, as the case may be, shall be allowed to flow; for them to regulate the training and licensing of teachers,—is an impertinence much more likely to accentuate all existing animosities and disruptive tendencies than to render the next generation better fitted for the discharge of civic duties.

“We must educate our masters.” Whom did the inventor of the formula mean by “we”? He meant the Parliament about to be elected by the enlarged

¹ As I have argued in Chapter I., this average need not be evenly distributed among all classes. It is quite conceivable that an exceptionally broad-minded and patriotic upper class might successfully work an uncompromisingly democratic constitution, in spite of an extremely low standard of intelligence in the masses.

electorate just called into being, and the Ministry supported by the majority of that Parliament. The "masters" to be educated were the newly enfranchised urban wage-earners, whose opinions were expected to prove the most important factor in all future elections. That anticipation has been but very partially fulfilled, even since the further extension of the franchise in 1885, because the superior power of organisation among the propertied classes enables them very largely to impose their own opinions upon the masses, or at all events to secure prominence at election times for the questions that chiefly interest them. Even in the General Election of 1906, from which the Labour Party emerged in unprecedented strength, this was due in large measure, as Mr. Harold Cox showed in the *Daily Chronicle*, to employers of labour voting for the Labour candidate as the lesser evil in preference to his Protectionist opponent. In other words, it was because the most foolish and predatory tendencies of the working classes were less foolish and less predatory than those patronised by a formidable group of great landowners and capitalists. But so far as the masses are really masters, it is they who must have the credit or discredit of the course of educational legislation from 1870 downwards. They are the "we" who have been educating, not, of course, themselves, but the next generation of their own class. If, therefore, the result is alleged to be good, then some good at all events can come out of a democracy, even where the majority are uneducated. If the result is bad, then State education is no panacea against the dangers of democracy.

The real fact is, that the success of representative democracy, the only kind that has ever yet been tried on a large scale, depends much less on the proportion of literates to illiterates than on the proportion of social to anti-social sentiment. Democracy does not mean that every elector is to form an independent opinion

on every public question, or even on the broad lines of national policy. It is sufficient if the actual rulers have the general confidence of an assembly, each member of which has the confidence of a certain number of active politicians in his constituency, who are able by some means or other to influence a larger number of voters than the supporters of any other candidate. It is sufficient if the actual voter either bases his choice on what he knows of the candidate's opinions on such public questions as chiefly interest him, or else trusts the judgment of some one personally known to him who is in touch, possibly through several other intermediaries, with serious politicians. However indirect the process, the result is that the Government for the time being has the confidence of the majority of the citizens ; and that is democracy. In order to make such democracy a success, two things only are necessary : (1) a sufficient number of capable legislators and administrators to afford the electors a wide range of choice ; and (2) a sufficient number of well-informed and well-disposed non-official people, connected in natural and kindly ways with those below them in the scale of education, to render it likely that their advice will be freely asked and given, or that their example will be instinctively followed. Where these conditions exist, all will go well in the political sphere, even though fifty per cent. of the voters should be illiterate ; where either of these conditions fail, the widest possible diffusion of clerkly accomplishments will not save the democracy from becoming the prey of political wreckers. When, after the American Civil War, the electoral franchise was conferred *en masse* on the newly emancipated negroes, the experiment was in any view one of unprecedented boldness ; but the really fatal obstacle to its success was not the ignorance and illiteracy of the negroes ; it was the fact that no candidates worthy of their confidence were forthcoming. Their old masters, the good and the bad alike, were

almost to a man ineligible as ex-rebels ; there had not been time for men of their own race to acquire or display any sort of political aptitude ; and the choice, if any, lay between two or more " carpet-baggers " from the North, equally unfamiliar with their needs, and for the most part equally self-seeking.

Of the two conditions above indicated as essential to the safe working of democracy, the first is not assisted, and the second is very seriously hindered, by State-supported education. Men fitted to lead in public affairs come as a rule from families well able to provide suitable home training ; or if not, they are men of the self-helping type, to whom the struggle for a living is itself an education. For the rank and file of the public service the Government has only to make known the educational qualifications required for first entrance, and the professional crammer will do the rest, at the expense of those parents who think the opening a suitable one for their boys. But for the all-important supply of unofficial observers and critics of public affairs a State-managed school system is not merely not necessary or helpful : it is in the highest degree detrimental. The teachers and their inspectors, and the heads of training colleges for teachers, all looking to rates and taxes for their pay and to Government for their promotion, will either use their educational influence in favour of the political views of their paymasters and patrons, or else will scrupulously abstain from expressing any political opinions at all, thus depriving the electorate of all assistance from the very quarter that ought to be the most illuminating. Debarred from expressing opinions, they will gradually cease to have any worth expressing ; an important part of their moral organism will be atrophied for want of exercise, and the consequent dullness will insensibly communicate itself to their scholars. And meanwhile the same cause that is drying up the springs of vigorous political thought will be adding to the

complexity and difficulty of political problems. From the task, already sufficiently arduous, of keeping the peace at home and abroad, the statesman will be perpetually distracted by questions of pedagogy, running up into just the topics over which popular passions are most easily excited; while on the financial side he will be harassed by demands which must perpetually grow when the principle is once conceded. For State education carries with it almost of necessity the whole creed of Collectivism. If voters who are barely able to earn the necessaries of life for themselves and their children are offered, and are compelled to accept, a certain measure of gratuitous instruction for their children, it will be difficult to persuade them that they have not an equal right to have their children fed and clothed at the public expense, especially seeing that the hungry child cannot learn, that the bootless child cannot walk to the school, that the ragged child will not be admitted, and that the family income is diminished by the prohibition of child labour. But when we have got thus far, to expect children who have had everything found for them during the day to spend their nights with half-starved parents in an overcrowded garret will seem so utterly incongruous, that either municipal housing or a State-provided minimum will inevitably suggest itself; unless, indeed, the problem is solved by removing the children into some public phalanstery, and extinguishing the home once for all. Again, however the school age may be prolonged in deference to educational theories, the time must come at last for the results to be tested in the open labour-market. Then what is to become of those whose training turns out to have been of the wrong kind, and whom no one will employ at what they have been taught to regard as the lowest permissible wage? It will then be too late for the State to disclaim responsibility for their helpless condition, and so the taxpayer, who has already been bled for their schooling,

will be bled a second time for some scheme of subsidised employment.

If, on the other hand, the politicians can by any means be induced to keep their hands off the schools, the political task will be immensely simplified, while the formation of public opinion on all subjects, politics included, will be a healthy and natural process of mutual education. Each individual, when no sinister interest intervenes, seeks naturally to impart what he knows, and to learn from others what they know. Every parent strives with more or less earnestness and success to impress his own ideas of what is true and important upon his children, and selects other teachers from among those (if any) who offer themselves on terms within his means, according to the impression made upon him by their reputation and their methods. Every capable teacher seeks to commend himself in the first place to those who can afford to pay for the schooling of their own children, or, failing that, to one or other of the voluntary associations interested in providing gratuitous education; attaching himself, of course, by preference to that one whose ideals are most in harmony with his own. The free play of these social forces is far more likely than any State monopoly to bring about such a degree of political enlightenment, and above all such a prevailingly sane, genial, and tolerant temper, as is required for the safe working of democracy.

In this branch of our inquiry we are compelled to rely almost entirely on *a priori* reasoning. If it were possible to compare two countries, alike in all other respects, but differing in the presence or absence of State education, we should, of course, eagerly avail ourselves of the test. But there are no such contrasted countries, and no such contrasted periods in the history of any country. Every Government, by a sort of instinct of self-preservation, does its best to educate its subjects

according to its lights, in order to have at its disposal the kind of human instrument that will best serve its purpose.¹ There is at least as much State education, relatively to the total activity of government, in Turkey as in Switzerland; and if the quality of the teaching is according to our ideas inferior, it is no more so than the police, the judges, and the civil administration generally. The creed professed by the State being that which derives all useful knowledge, directly or indirectly, from the Koran, this view is naturally reflected in the curriculum of the schools. And though the financial arrangements for their support do not take the form of local rates or annual grants from the Treasury, but of rents from public lands, they are to all intents and purposes State schools. Allowing for the different view taken of religion as a test of citizenship, they are as much entitled to be called public elementary schools as those of Switzerland or England. The teachers are appointed from, and controlled by, the same body that supplies judges to the law courts; the instruction is offered gratis or at a low charge to all Moslems, rich or poor, and by the new constitution of 1908 it is made compulsory. It has never been offered to Christians or Jews, because they do not form part of the body politic of Islam, though the new constitution purports to admit them in other respects to full membership of the Ottoman body politic. They are permitted and expected to govern and tax themselves, in their seven recognised separate communities, for all common purposes that are not necessarily of Imperial concern, and presumably for such education as their

¹ I must except such a case as that of the slave-holding States of the American Union before the Civil War, where the chance of educating the slaves into loyalty to the existing régime was so hopeless that the opposite course was pursued of neither providing instruction at the public expense nor allowing it to be imparted by private effort, even by the masters and mistresses themselves.

religion prescribes. So again, if we compare different periods in the same country. There is no period in English history in which the State did not assume as full responsibility for the education of its subjects as for the protection of their civil rights. It is true that during most of the Middle Ages this was not saying much. The point is somewhat obscured by the fact that medieval England was under two governments, the one national, the other cosmopolitan, now and then openly hostile, but generally working side by side in close, though uneasy and precarious, alliance; and that in the division of functions between the two the supervision of schools and colleges, together with a very large amount of civil and criminal jurisdiction, fell for the most part to that extraneous, cosmopolitan government known as the Roman Catholic Church. It was none the less State education, if by that is meant that the personages who, as kings or barons, controlled what there was of public force in those days, took steps to secure, directly or indirectly, that all classes of the population should receive such instruction and training as was considered suitable to their respective vocations. Naturally this would not include book-learning for the servile classes, unless one here and there was picked out for the service of the Church. But the priests inculcated without book, through preaching and ritual, and images and mystery plays, whatever they were anxious that the common people should believe and practise; the priests controlled all schools properly so called, and beside the priests stood the law courts, both secular and ecclesiastical, ready to suppress unlicensed schools and heretical teachings, and to reward a knowledge of letters with "benefit of clergy." It is equally indisputable that after the Reformation, when the dualism in English government ceased, and the clergy owned a national instead of a foreign head, it was always understood to

be part of the duty of the priest to impart to the children of the poor as much instruction as it was thought good for them to have, and as the early demand for their labour would permit. If the legal minimum of instruction was taken to consist of the Lord's Prayer, the Ten Commandments, and the Church Catechism, this does not alter the fact that there was always in theory of law a State-provided system of elementary education, universal, compulsory, and gratuitous. The chief novelty of the nineteenth-century movement was the clumsy superimposition of an organisation of modern type on the unimproved and unimprovable fabric of the old State Church. The metaphor is only partially appropriate, because this same old Church, which was in its Erastian aspect a mechanical product of canon law, common law, and statute law, was in another aspect a living society, with traditions and aspirations of its own, not derived from the State, and not easily alterable at the bidding of the State. It may be said now with about equal approximation to truth that we have two State Churches, or that we have two systems of State education ; for the Church has always claimed education as one of its principal functions, while the State schools include in their regular curriculum religious instruction of quite a different type from that offered by the State Church. Hence a comparison between 1839 and 1870, or between 1870 and 1908, will not help us in the least to determine whether the theory of Voluntaryism or the theory of State provision and regulation is the sounder. Nor is there any other country known to me in which a comparison between past and present would on this precise point prove any more enlightening. The nation that now declares for Voluntaryism will be as distinctly trying a new experiment as we were when we pioneered for the world in the matters of representative parliaments, of free trade, and of freedom of labour. In the first

case, England was led almost blindfold, by a sort of happy instinct and a combination of favouring circumstances, into that better path which was missed by the continental nations, escaping from the Scylla of medieval anarchy with a comparatively brief immersion in the Charybdis of centralised autocracy. In the second case, philosophy, in the person of Adam Smith, had a good deal to do with the British initiative, though exceptional circumstances had perhaps still more. We stood equally alone among the nations when we abolished slavery, in spite of Biblical sanction and an almost unbroken course of Christian practice. On two out of these three questions the whole civilised world has followed our lead; and if in the matter of free trade we have had few imitators among foreign Governments, and some conspicuous backsliders among ourselves, we have the sympathy of the best foreign thought, the main body of Liberal opinion at home, and results that speak for themselves. There is, therefore, no reason why we should be unduly nervous at the prospect of standing alone for a time in a new policy of dissociating education from State coercion, whenever logic and sentiment come to point in that direction. These are for the present our only possible guides, in the absence of materials for experimental comparison.

Another favourite plea of the State-educationist is that the children of the poor are "the nation's children"—an asset of great potential value to the community, but depending for its realisation on the initial care and expense bestowed on it. Writers like Mr. H. G. Wells and Mr. Chiozza Money harp incessantly on this string. As the latter puts it ("Riches and Poverty," p. 175)—

"Intellect and genius are the possession of no single class. Year by year we waste the greater part of the gifts of our people. Year by year we brutalise people who, given opportunity, might enrich our literature or ennoble our art. Here and there some rare combination of muscle

and brain rises superior to circumstance, and lives to command the class which would have suppressed him. These exceptional cases serve to remind us of the ability which is lost." . . . "If we are in earnest in this matter of the problem of poverty, we must hasten to equalise opportunity."

From the point of view of a justice-enforcing association, such a plea is obviously irrelevant. The adviser of such a society does not, as such, take all sociology for his province. He has not been charged with a general commission for the improvement of human affairs, but with the specific duty of preventing or redressing wrongs. Such a phrase as "the nation's children" has for him absolutely no meaning. As even a recent Minister of Education had the courage to remind the House of Commons, "man is born of woman, not of the State." A child is nobody's property, but a potentially self-owning individual, claiming a share of the statesman's attention in that he is, like other individuals, capable of committing or suffering wrongs, and an extra share of attention in that he is less capable than an adult of protecting himself. Among the wrongs against which the child needs protection, is the wrong done by those who brought him into the world if they fail to secure him a fair chance of a life worth living. The form which this protection ought to take has already been discussed in Chapter II. There is manifestly no injustice, no aggression, in the mere fact of a rich man being able to provide for his children better teaching than a poor parent can afford to pay for, and more prolonged than a poor man's child has leisure to receive; whereas there is *prima facie* injustice in robbing the rich in order to give to the poor, whether the gift takes the form of hard cash or of schooling for the latter's children; whether it is begged for by the recipient or forced upon him for his good by his self-constituted mentors.

CHAPTER V.

SHOULD THE STATE CONCERN ITSELF WITH SECONDARY AND HIGHER EDUCATION?

“That the whole or any large part of the education of the people should be in State hands, I go as far as any one in deprecating. All that has been said of the importance of individual character, and diversity in opinions and modes of conduct, involves, as of the same unspeakable importance, diversity of education. A general State education is a mere contrivance for moulding people to be exactly like one another; and as the mould in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or a majority of the existing generation, in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body.”—Mill, “On Liberty,” chap. v. p. 2.

THE arguments which we examined in the last chapter and found insufficient were arguments for providing at the public expense “elementary education” for the children of the poor. The prevailing conceptions of what should be included in elementary education have altered a good deal since 1870; but most people still understand by the term such instruction only as will be useful to a young person who expects to begin regular wage-earning at fourteen. Professor Michael Sadler, a recognised authority on the subject, has expressed the opinion that all forms of general education from twelve onwards should be regarded as forms of secondary education. It was also the prevailing notion until very lately that even as regards elementary education State provision would never, and State compulsion

would very rarely, be necessary for any children whose parents were well above the poverty line. It was supposed that either parental affection, or enlightened self-interest, or the public opinion of their class, would ensure that all parents who could afford to pay would pay for some sort of schooling, and that the middle-class parent would be no more likely to go wrong in the choice of a suitable school for his particular children than any educational authority. Now, the demand is that all education, elementary, secondary, and university, for rich and poor alike, shall be State-provided and State-regulated, and every year brings us a step nearer to that consummation. The tremendous consequences involved in this programme are strangely ignored by statesmen and journalists of all parties.

It means, in the first place, the weakening of that firmest of all guarantees for good government, which consists in the amenability of the rulers to public criticism. It was pointed out in the preceding chapter that even the State provision for elementary education must have the effect of contracting the supply of intelligent unofficial observers and critics of public affairs by withdrawing the whole array of certificated teachers, school inspectors, and heads of training colleges; and obviously the loss will be vastly more serious when we add to these all the masters and mistresses of our present proprietary and endowed schools, all the present university professors, and all the additional teachers rallied round the Government by the lure of State pay. The power that controls the appointment, pay, and promotion of all public teachers, controls indirectly the pulpit and the press, by controlling the mental environment of the future preachers and writers. If it cannot absolutely ensure that in the teaching of the highest subjects those theories, those interpretations of the facts, shall be followed which harmonise best with the policy actually pursued, it can discourage all serious thinking

on dangerous subjects by subsidising preferentially on the one hand the so-called practical studies, or on the other hand the merely ornamental. This was clearly perceived by Godwin, early in the last century, when the question of national education was only just beginning to be agitated in this country—

“Had the scheme of a national education been adopted when despotism was most triumphant, it is not to be believed that it would have for ever stifled the voice of truth ; but it would have been the most formidable and profound contrivance for the purpose that imagination can suggest. Still, in the countries where liberty chiefly prevails, it is reasonably to be assumed that there are important errors, and a national education has the most direct tendency to perpetuate those errors, and to form all minds into one mould.”¹

The case need not have been put hypothetically. Some of the most formidable despotisms that the world has ever seen, *e.g.* those of Turkey, Russia, and Spain, have, as a matter of fact, been supported by a system of national education, though the fact is disguised by the religious character of the “free and compulsory” instruction provided. And the less thoroughgoing State education provided in this country through the National Church, both before and after the Reformation, had undoubtedly the effect of universalising and perpetuating erroneous notions as to the nature of the Bible, and as to the seat of authority in religion, which would otherwise have been much more easily dissipated by scientific and historical research.

But secondly, this upward extension of the range of State education means, in so far as the community still retains vigour enough to struggle against the threatened spiritual enslavement, an enormous extension of the inevitable bitterness of political strife. If a nation is to escape the moral asphyxiation which is the normal result of a State monopoly of the chief character-

¹ “Political Justice,” vol. ii. p. 303.

moulding agencies, it can only be by resolute political action on the part of educational reformers. The very mildest form that this can take is that of electioneering on a large scale ; the next mildest is that of passive resistance on a large scale. Both of these we have seen in England of late, and few will deny that the effect on the general efficiency of legislation and administration has been disastrous. Ministry after ministry has found its hopes of reform dashed by the intrusion of the "religious difficulty." To specify the measures so retarded would involve us in controversy without limit, since what one reader would hail as a reform another might deprecate as a change for the worse. If, speaking as a democrat, I point out that but for the wranglings and division of Radical forces which preceded and followed the Education Act of 1870, we might by this time have abolished the House of Lords and all forms of plural voting, and might have had a complete system of adult suffrage with proportional representation, my Conservative readers will be inclined, perhaps for the first time in their lives, to bless the memory of the late Mr. W. E. Forster as the unconscious instrument of Providence in preserving the nation from such horrors. If again, as a law reformer of the school of Bentham, I lament the impossibility of arousing public interest in the simplification of law and the cheapening of civil justice, so long as we are deafened by the war-whoops of denominationalists and anti-denominationalists, the complaint will elicit a complacent chuckle, not only from the haters of all reform, not only from those whose professional gains are swollen by uncertain and expensive law, but from a host of well-meaning but unreflective people who confound the remedy with the disease, and imagine that quarrels would be multiplied if the facilities for their peaceful settlement were increased. If, on the other hand, I happen to be a Unionist and Imperialist, and complain as such that State education in Ireland

keeps alive the religious antagonism which the disestablishment of the State Church was intended to remove, and so strengthens the demand for repeal of the Union, and that the battle of the schools in England distracts the attention of Parliament from questions of public defence and world-politics, I shall hear "So much the better!" from those who are Home Rulers or Little Englanders first, and British patriots afterwards. Nevertheless, I believe that we do most of us desire in a general way that government shall be efficient, which it cannot be so long as the best energies of our best citizens are neutralised by educational antagonism. And I also believe that we do most of us desire to be preserved from the horrors of civil war, which can never be far off when the State intervenes as a partisan in those conflicts of opinion which concern matters of deep spiritual moment. We have on this point a remarkable admission from that eminent and enthusiastic State-educationist, Dr. Sadler—

"Education seems at first sight the simplest way of uniting a nation. But it only succeeds in uniting those who are already ripe for union. When a nation is deeply divided on fundamental questions, attempts to eradicate such divisions by plans of educational organisation tend to set up irritation rather than to encourage unity. This, it would appear, is the situation which we have to face in England."¹

Our political thermometer is happily a good way below boiling-point at present, partly because our universities and our secondary schools have hitherto been but slightly affected by State meddling. The educational independence enjoyed till now by our upper and middle classes has imparted to them a variety of culture, and a spirit of mutual toleration, which it will take many years of compulsory uniformity to convert into a really dangerous degree of mutual exasperation; but the dragon's teeth

¹ Board of Education, Special Reports, vol. ix. p. 6; Parliamentary Papers, 1902. Cd. 836. Reports from Commissioners, 18.

have been sown, and the maturation of the crop is only a question of time, unless the sowers can be persuaded to dig them up.

Though the bitter political struggle here portended will have its roots in profound differences of spiritual aim, it will probably find its first concrete expression in *£ s. d.* If you descant to an ardent educationist on the ever-growing rates and taxes, he will reply in effect that there is no object on which money can be better spent. And, speaking in the abstract, he will not be so very far wrong. But "speaking in the abstract" means here speaking without reference to the question, Whose money is to be thus spent? Is it the surplus money of persons who deliberately, of their own free will, choose to devote it to this particular purpose through this particular channel? Or is it money levied in the ordinary way of taxation, pressing with equal weight on those who approve and those who disapprove; on Lord Sheffield (the Lyulph Stanley of London School Board days) and on Lord Hugh Cecil; on the editor of the *Schoolmaster* and on the editor of the *Individualist*; on Sir John Gorst, the late Minister of Education, and on his son, the author of "The Curse of Education"; on Mr. Hugh Philpott, the eulogist of the London School Board, and on Mr. James Philpott, the author of "Our Abominable Schools"? The apportionment of taxation is fruitful enough in bitter controversy, even when the object of the levy is one in which all acknowledge a common interest. But when the money is going to be spent in counteracting the influence, and discountenancing the cherished beliefs, of the dissentient taxpayer, his exasperation increases rapidly with every fresh turn of the screw; and so does his power of enlisting on his side the passions of the masses, who care little about theories of education, but a great deal about cheap bread.

Does education itself stand to gain by all these

sacrifices ? Short-sighted and superficial observers may be inclined to say " Yes." They see schools multiplied, appliances elaborated, a highly organised army of teachers, clever boys pushed up the educational ladder from the gutter to the university, and thence into the public services. So was China swarming with State-manufactured *litterati* when she woke up to find herself hopelessly distanced in all the arts of peace and war by the Britisher as he was in the forties and fifties of the last century, before Board Schools or Civil Service examinations had been heard of. To the serious thinker these conventional measures of educational progress are of very little account. They are quite compatible with very poor results in the all-important points of formation of character and development of intelligence.

In education as in other arts, variety of experiment is essential to progress. But variety of experiment is very difficult to combine with centralised bureaucratic control ; and still more difficult is it to maintain the disinterested love of truth and beauty in teachers and scholars brought together by only such motives as the State is capable of supplying. Let us listen once more to Dr. Sadler, perhaps the greatest English authority on foreign systems of State education, on the present position in Germany, whose superiority in this field is so constantly paraded to our confusion—

"The German system of education, and those other systems of education which have been modelled on the German, seem calculated to produce what is organisable and imitative rather than what is creative and independent. Yet at a time like the present, which is a time not only of national and social consolidation but of new departures and re-adjustments of aims and principles, both sets of qualities are necessary ; and the habit of subordination without the gift of initiative may prove more perilous in the long-run than the gift of initiative unaccompanied by trained power of subordination " (*Ubi supra*, p. 68).

To expect the gift of initiative to be fostered in State-provided schools is surely to expect figs from thistles.

Dr. Sadler's chief reason for admiring the German educational system is, as he himself perceives, a reason against attempting to imitate it in England. It is that it fits in so perfectly with that system of compulsory military service which preceded it in order of institution : " German education impregnates the German army with science. The German army predisposes German education to ideas of organisation and discipline " (p. 43).

Certainly, if the object were to convert the whole people into an efficient fighting machine, nothing could be better. Even a mere justice-enforcing association might conceivably find itself so situated that for the time being its main business would be fighting for its existence against enemies without and rebels within, and it would have no choice but to take Sparta or Prussia for its model. But such a state of tension could not possibly be permanent. If the silencing of justice amid the clash of arms is unduly prolonged, its powers are lost by disuse beyond hope of recovery. If, on the other hand, victory smiles on the justice-association before it has ceased to deserve the name, and while its professed aim is still sincerely pursued, it will certainly seize the opportunity to cultivate friendly relations with its neighbours, and to reduce internal coercion to a minimum. The Romans did well to submit to a dictator under exceptional stress of war, but when from lust of empire they allowed the exception to become the rule, they forfeited for ever their chance of leading mankind in the direction of freedom and justice. Whether the historian of the twentieth century will say the same of Prussia, remains to be seen ; but it seems fairly safe to prophesy that if she does escape that fate it will be after such a struggle as we may devoutly pray to be spared from in this country. She will be saved in spite of, and by destruction of, the present State monopoly of education, and by reason of those innate qualities of the German people to which, as Dr. Sadler himself shows,

most of what is worthy of imitation in German educational methods is attributable—

“The strength of German education lies in its great tradition of disinterested devotion to knowledge ; in the self-sacrificing labours of the teachers ; in the cultivated interests which distinguish so large a proportion of German homes ; in the strong personal interest which parents take in the intellectual progress of their sons ; in the ‘plain living and high thinking’ which have fostered through so great a part of the German nation a reverence for learning and a readiness to make personal sacrifices for ideal aims ; in that inner freedom of soul which Amiel said he had so often noticed among the best Germans ; and in the ‘infinite capacity for taking pains,’ which (whether innate or the result of a long tradition of educational discipline) is characteristic of so many German minds. The perils of German education lie in the machinery of its State control ; in the rapid growth of wealth, which has already removed many of the old incentives to effort ; and in the temptation to sacrifice higher educational aims to the desire for commercial success” (*Ubi supra*, p. 55).

Yes, it may be said,—and Dr. Sadler does say it in effect,—liberty and variety are no doubt important, but so is also unity, organised co-operation on a large scale. Granted ; but does it follow that the organisation must be that of the State ? It is surely rather late in the day, in this age of gigantic joint-stock enterprise and Salvation Armies, to talk as though voluntary organisation on any required scale were impossible. But it has this great advantage over compulsory association, that it does not go beyond the real requirements of the case. Where two churches or schools of independent origin discover that their aims are partly the same and partly different, they will be ready to combine their forces as regards the former so soon as they are convinced that effort may be thereby economised, while remaining separate as regards the latter. When they further discover that some of the objects for which they combined with this one kindred society are also desired by a large number of more distantly related societies, they find it worth while to devote a portion of their resources to the support of an association embracing all these bodies, and therefore

much larger than the first as regards its list of contributories, but proportionately narrower in its definition of the common purpose. Such was the origin, and such would have been, but for State interference, the natural development, of the British and Foreign School Society and of the National Society. Such is the tendency, going on before our eyes, of so much of our secondary and higher education as is still unaffected by State provision and regulation, and of so much of associated religious life as goes on outside the National Establishment.

For all these reasons, the reader who has followed me thus far will perhaps expect to find me keenly sympathetic with such unavailing protests as have been made from time to time against any further extension of the power of local authorities to assist secondary education out of the rates. I am, of course, sympathetic, but not keenly so; I doubt if I should have thought it worth while to displease the party Whip by voting for amendments of that kind, simply because the protest is so obviously belated. Not merely the accident of a big Government majority, but the nature of things renders it impossible to take up a defensible position anywhere on the border-line between primary and secondary education, or between schools for the poor and schools for the well-to-do.

Inasmuch as J. S. Mill evidently thought otherwise when he penned the passage prefixed to this chapter, it will be worth while to examine the point somewhat fully.

If we start like Mill, and like the legislators of 1870, with the notion that the proper person to bear the expense of a child's education is the parent, and that the only justification for State provision is the inability of some parents to provide that minimum of instruction the lack of which is said to be a public danger, the only logical course is to treat such inability in the same way as the law treats inability to feed or clothe the

child sufficiently—that is, to force the parent to choose between the prison and the workhouse by prosecuting him for neglect. If the less logical course is adopted of supplying free schooling to children of poor parents, not as paupers, but as a matter of right, then the parents a little above these in social position, who cannot or will not prove the required degree of poverty to the satisfaction of the authorities, are placed at a serious disadvantage, and will naturally complain. The hardship in their case is the greater, because the parental duty to provide proper education tends to be interpreted in their case as a duty to send their children to these particular State-provided schools, through the inability of all other schools within their means to maintain themselves in the face of State competition. Thus we come by a logical necessity, in England as elsewhere, to free elementary education all round. But when once the poverty test is abandoned, the reasons for stopping at elementary education lose most of their force. If the State-provided instruction is good as far as it goes,—and no one would defend from any point of view the sort of parsimony that would spell inefficiency,—it will attract ever higher and higher social grades. It is said that when the London School Board passed out of existence eleven-twelfths of the child population of the County of London were using the public elementary schools. This is only a little less than the proportion borne, according to Mr. Chiozza Money, by families with incomes of less than £160 a year to the whole population of the United Kingdom,¹

¹ See “Riches and Poverty,” p. 41, where the estimated number is thirty-eight out of forty-three millions. But see also Mallock, “The Nation as a Business Firm,” p. 94, where reasons are given for thinking that, if assessment took account, not of the individual income only, but of the effective family or house income, and if the assessment limit were still what it was before 1894,—*i.e.* £150,—the class which pays income-tax would by this time embrace more than one-half of the population.

and it is quite easy to understand how parents below, or even a little way above, that line would find it impossible to provide from their own resources any schooling for their children at all equal to that offered them for nothing by the State. But the natural consequence of bringing together in the same classrooms children who are going to start manual labour at twelve or fourteen with those destined to brain-work and not forced by poverty to quit so early, is to induce pressure from several quarters at once for State provision of more advanced instruction, with or without encouragement in the way of scholarships to the brighter children of poor parents to climb the first round of the ladder that leads to the universities. It is hardly possible to refuse such a demand without provoking the question, Why then did you give free elementary education to all without proof of poverty? If you give up Mill's principle, that the education of the child is one of the duties of the parent, to be enforced as far as possible at the charge of the parent, what other principle can you invoke, except the Socialistic one, that every child born within the United Kingdom is an asset of the State, which should be utilised to the utmost at the expense and for the benefit of the State? Mill, as we have seen, emphatically repudiated this view; but we have also traced the process by which its acceptance became ultimately inevitable back to Mill's own initial concession that a parent might still be treated as an independent citizen, and the lawful guardian of his child, though too poor to perform an important part of his parental duty. Thus we are brought back to the conclusion, which it requires some audacity to formulate, that in this matter of State education the theory and practice of all nations, both ancient and modern, have been wrong from the point of view of the mere lover of freedom and justice. The Voluntaryist theory here set forth is not, of course, new in the sense

of being an invention of the present writer, but it is new in the sense of having never yet been adopted and practically tested in any community. Wilhelm von Humboldt, whose thoroughgoing assertion of the principle is prefixed to Mill's essay "On Liberty," was compelled by the irony of fate to become the first Minister of Education in Prussia, apparently without any change in his personal convictions. Godwin at the commencement, and the bulk of British Non-conformists down to the middle of the last century, and Herbert Spencer and Goldwin Smith down to our own times, preached the doctrine powerfully enough, but never came anywhere near success. They encountered at the outset this fatal obstacle, that Voluntaryism in education presupposes Voluntaryism in religion. You may have State education (of a sort) without a State Church, but you cannot have a State Church without "National" schools. Now, for reasons with which logic has very little to do, the assailants of the Established Church in England had at the best of times a very tough job before them. Those very anomalies which made the institution logically indefensible, went far towards making it practically unassailable. But when the main body of the Nonconformists accepted the principle of State education, they neutralised, if they did not actually transfer to their opponents, the logical advantage that had hitherto been theirs. By a strange paradox, praise of the so-called "voluntary school" became the shibboleth of the most ardent supporters of the National Establishment, while the Nonconformist leaders took up the Erastian position under the new-fangled name of Undenominationalism.

But the functions claimed for the State in relation to public worship must be treated in a separate chapter. For the present it is enough to repeat that State provision of elementary education is bad for morals and liberty, that State provision of secondary education is

by several degrees worse, but that the lesser evil, once admitted, draws with it inevitably the greater also.

Note that in India the process here described was reversed, the Government concerning itself first, for political reasons, with the diffusion of Western knowledge among the upper and middle classes, in order to have a class to whom they might look for sympathetic help in the business of administration. But of late years the apparent injustice of providing the comparatively well-to-do with the means of further advancement out of taxes levied mostly from the very poor, reinforced by indications that the official educators had not been altogether successful in moulding the minds of the former in exactly the fashion most convenient for their rulers, has led, not, as would have been reasonable, to the curtailing of this expense, but to further taxation of the poor for the (supposed) benefit of the poor.

CHAPTER VI.

[STATE PROVISION FOR PUBLIC WORSHIP.

THE views advocated in the two preceding chapters laboured under the disadvantage of being opposed not only to the almost universal practice of ancient and modern communities, but also to a considerable preponderance of opinion among those whom we commonly think of as advanced reformers. It will now be a refreshing change to find ourselves swimming with the main current of Liberalism.

In one of the divisions of the United Kingdom, in all our self-governing Colonies, in the United States of America, in Mexico and Brazil, and now under the French Republic, the separation of Church and State is complete.¹ In Switzerland, though the government of the Protestant Churches is under the supervision of the cantonal magistrates, "no one is bound to pay taxes specially appropriated to defraying the expenses of a creed to which he does not belong." The other continental countries in which we still find one Church enjoying a monopoly of State support, or else several rival Churches impartially subsidised, are for the most part less politically advanced. Among ourselves the survival of the old National Churches of England and Scotland is more a matter of *vis inertiae* than of positive popularity, and is largely to be explained by the fact that they have really become to a considerable extent, and have the appearance of being to a much greater

¹ At the time of going to press the corresponding measure for Portugal is still only the project of a government which is itself only provisional, and it may or may not become law in its present shape.

extent, voluntary institutions. Their maintenance does not figure as an item in either national or municipal expenditure, and, conversely, the management of their affairs is left very largely in the hands of their voluntary adherents. Wherever, as under the Education Acts, there is a distinctly traceable appropriation of enforced contributions to the support of any form of religion, the liveliest jealousy is aroused. So that, on the whole, it is correct to say that modern Liberalism, or, to be more precise, that modern Democratic sentiment, while favourable to a State provision for secular education, is opposed to any corresponding provision for religious worship and instruction.

Thin and unsubstantial in the light of reason, the distinction is intelligible enough in the light of history. The lessons of experience have had time to produce their effect in the one case, but not in the other.

The systematic inculcation of religion by the State is very ancient. A very large part of human history, and particularly of the political history of Christendom, is made up of the bloody wars and alternate persecutions which were the outcome of this conception of governmental functions, and as the result of these awful experiences the more teachable nations have passed, or are passing, through toleration to more or less complete exclusion of religion from the domain of politics. State education as a humble auxiliary to State religion is equally ancient, and stands condemned by the same long range of experience ; but State education wholly or mainly secular is so modern an experiment that it has not had time to develop conflicts of equal intensity ; and the very fact that in our English half-and-half system the chief trouble has arisen over the question of religious teaching in State-provided or State-aided schools, has led sanguine educationists to imagine that all must go smoothly if only this disturbing element can be eliminated.

Be that as it may, the question that here concerns us is, whether the considerations set forth in the last chapter, as militating against the inclusion of general popular education among the appropriate functions of a justice-enforcing association, apply wholly or partially, with greater or less force, to State-provided instruction on the subject of religion, and to State-provided worship regarded from an educational or any other point of view.

Now, so far as religious instruction is concerned, it would seem *a priori* (as it did, in fact, seem to our forefathers) that if the idea of the State-educationist is to economise police and prisons by nipping in the bud the criminal propensities of the young, the very first place in the school curriculum should be assigned to moral instruction, and that every attempt to cultivate the moral sense must presuppose some theory, positive or negative, concerning the grounds of hope for the virtuous and of fear for the sinner, concerning the meaning of pain and death, and therefore concerning God and the hereafter. You do not attempt to teach astronomy without any theory of the solar system, nor mechanics without reference to the law of gravitation, nor geography without first settling whether the earth is a globe or a disk. But then, of course, comes the difficulty that, whereas the Newtonian system of astronomy and the spheroidal basis of geography are now accepted everywhere with no dissentients worth mentioning, there is no similar agreement respecting the necessary postulates of moral teaching, but on the contrary the most complete chaos of opinion. As to the sort of conduct that is so distinctly anti-social as to call for legal repression, and as to certain habits that it is generally desirable to encourage, there is a fairly strong, though far from absolute, consensus; but as to the ultimate criterion of right and wrong, and as to the motives on which the main stress should be laid by the teacher, there is the flattest contradiction

between what may be broadly described as the traditional and the modern views, while the subdivisions among those arrayed on either side in the main controversy are neither few nor insignificant.

Weighty as this objection is, it would be necessary to overrule it and to ride roughshod over passive resisters and conscientious objectors of all sorts, if State-provided education were proved to be the only agency available for combating the incipient criminal propensities of the juvenile population. Of all policies the most indefensible is that of forcing everybody to pay for, and forcing all children into, schools in which all debatable topics are tabooed ; because in such schools the teaching must necessarily be of too jejune and insipid a character to have a wholesome moral influence. But if the reasoning of the preceding chapter is sound, there is a ready way of escape from the dilemma in the hitherto untried, but in every way promising, experiment of complete Voluntaryism as regards general education, coupled with complete State control of children for whom fit private guardians cannot be found. Whenever our own or any other State is prepared to try this experiment, the way will be cleared for consideration of the question of tax-supported public worship, quite apart from that of religious instruction in State-provided schools ; hence in this work, which is concerned with the logical development of a theory rather than with the problems that happen to be pressing for solution at the time of writing, it will not be inopportune to enter on the inquiry at once.

Those modern thinkers who still cling to Burke's grandiose conception of the State as "a partnership in all science, in all art, in every virtue, and in all perfection," will naturally also applaud his famous defence of the principle of a State Church ("Reflections," p. 145)—

"They think themselves bound, not only as individuals in the sanctuary of the heart, or as congregated in that

personal capacity, to renew the memory of their high origin and caste ; but also in their corporate character to perform their national homage to the institutor and author and protector of civil society ; without which civil society man could not by any possibility arrive at the perfection of which his nature is capable, nor even make a remote and faint approach to it. They conceive that He, who gave our nature to be perfected by our virtue, willed also the necessary means of its perfection. He willed, therefore, the State. He willed its connection with the source and original archetype of all perfection. They who are convinced of this His will, which is the law of laws and the sovereign of sovereigns, cannot think it reprehensible that this our corporate fealty and homage, that this our recognition of a seigniority paramount, I had almost said this oblation of the State itself, as a worthy offering on the high altar of universal praise, should be performed, as all public solemn acts are performed, in buildings, in music, in decoration, in speech, in the dignity of persons, according to the customs of mankind, taught by their nature—that is, with modest splendour, with unassuming state, with mild majesty and sober pomp. For those purposes they think some part of the wealth of the country is as usefully employed as it can be in fomenting the luxury of individuals. It is the public ornament. It is the public consolation. It nourishes the public hope. The poorest man finds his own importance and dignity in it, while the wealth and pride of individuals at every moment makes the man of humble rank and fortune sensible of his inferiority, and degrades and vilifies his condition. It is for the man in humble life, and to raise his nature, and to put him in mind of a state in which the privileges of opulence will cease, when he will be equal by nature, and may be more than equal by virtue, that this portion of the wealth of his country is employed and sanctified.”

From our point of view the larger portion of this fine rhetoric is beside the mark. The State as conceived by us being an association for one strictly defined purpose, and a purpose the importance of which, great as it always has been and still is, must constantly diminish as mankind advance in virtue, the fullest acknowledgment of the propriety of invoking the divine blessing in all human undertakings will not carry us further than it would in the case of a literary and scientific society, a social club, or (to take a closer analogy) a mutual insurance society. In all these cases, if the bulk of the members were as

piously disposed as Mr. Burke, it might be seemly and edifying to commence and conclude every business meeting of the body with prayer. As applied to the State, this would mean either no charge at all on the public revenues, or, at the utmost, salaries proportioned to extremely light work for a few chaplains, parliamentary and municipal, military and naval, etc. But the actual usage of Englishmen, and with our present doctrinal diversities surely the most convenient usage, is to keep their devotional exercises, if any, entirely separate from their business relations, and to sort themselves for the former purpose not according to community of secular duties and interests, but according to community of theological persuasion ; and so long as this continues to be the general usage there seems to be no reason for making an exception in the case of political business. At present, in the public religious services of all denominations, it is usual to find some reference to public affairs, some special intercession for those entrusted with political authority, whereas the interests of bakers, tailors, and the rest are commonly lumped together in some general form of intercession, "for all the Commons of the realm," or for all mankind. Food and clothing are neither more nor less necessary than State protection to the normal human being ; but the fact that the State must be one and indivisible in order to be effective, whereas there may be any number of competing bakers and tailors, and from the point of view of the consumer the more the better, does to some extent justify the singling it out for special mention in common devotions as in social gatherings.

But it is one thing to make special mention of the State and its officers when people meet on the basis of religious fellowship, and quite another thing for the representatives of the people, professing various creeds or no creed at all, meeting to transact the State business, to introduce the incongruous element of a religious

ceremony. Such happens, indeed, to be the practice, both of the Congress of the United States and of the British House of Commons ; but in the latter body at all events it does not appear that the daily prayers are either very numerous or very reverentially attended, nor that the chaplaincy is much better than a well-paid sinecure. In truth, no one would be at the trouble of instituting a National Church for the limited purpose of devotional exercises in connection with State functions. The chaplaincies attached to the Houses of Congress do not prevent Americans from boasting that they have no State Church. Both to those who like, and to those who dislike, the institution so named, it presents itself as a great proselytising and educational agency. Even Burke, whose eulogy of its ceremonial aspect I quoted just now, shows a little further on that he attaches still more importance to its preaching function ("Reflections," p. 151)—

"The Christian statesmen of this land would indeed first provide for the multitude, because it is the multitude, and is therefore, as such, the first object in the ecclesiastical institution, and in all institutions. They have been taught that the circumstance of the Gospel being preached to the poor was one of the great tests of its true mission. They think, therefore, that those do not believe it who do not care that it should be preached to the poor. But as they know that charity is not confined to any one description, but ought to apply itself to all men who have wants, they are not deprived of a due and anxious sensation of pity to the distresses of the miserable great. They are not repelled through a fastidious delicacy, at the stench of their arrogance and presumption, from a medicinal attention to their mental blotches and running sores. They are sensible that religious instruction is of more consequence to them than to any others, from the greatness of the temptation to which they are exposed ; from the important consequences that attend their faults ; from the contagion of their ill example ; from the necessity of bowing down the stubborn neck of their pride and ambition to the yoke of moderation and virtue ; from a consideration of the fat stupidity and gross ignorance concerning what imports men most to know, which prevails at courts, and at the head of armies, and in senates, as much as at the loom and in the field. . . . Our provident constitution has therefore taken care that those

who are to instruct presumptuous ignorance, and who are to be censors over insolent vice, should neither incur their contempt nor live upon their alms ; nor will it tempt the rich to a neglect of the true medicine of their minds. For these reasons, whilst we provide first for the poor, and with a parental solicitude, we have not relegated Religion (like something we were ashamed to show) to obscure municipalities or rustic villages. No ! We will have her to exalt her mitred front in courts and parliaments. We will have her mixed through all the mass of life, and blended with all the classes of society."

The treatment here commended is truly homœopathic ; to trust the correction of the vices of rulers to censors dependent for their comfortable and lucrative posts on the patronage of those same rulers ! A much more promising method of correcting the vices of the great is to expose them to the full force of the criticism of a free press. But the larger the number of moral censors by profession enlisted in the service of the State, the fewer and feebler will be the voices raised in honest, independent criticism. In England this particular evil is much mitigated by the looseness of the tie connecting our so-called National Church with the Government of the day ; the life tenure of the beneficed clergyman shields him to some extent from the necessity of subserviency to the living great, but at the cost of a no less demoralising subserviency to the Dead Hand—to a system of dogma and ritual prescribed by an Act of Uniformity several centuries old, which is or ought to be repulsive to any well-informed modern theologian.

It is possible, no doubt, for both press and pulpit to be corrupted by private as well as by public wealth ; but there is comparative safety here in the great variety of patrons. One hears complaints, mostly from Socialists, that dependence on the wealth of private capitalists gives an unfair advantage, in English and American seats of learning and in journalism, to the economic views favoured by capitalists ;¹ but the evidence in

¹ See, for instance, Mr. J. A. Hobson's "Crisis of Liberalism," p. 218.

support of these complaints is incomparably weaker than the historic evidence as to the sinister influence exercised over the pulpit, the professoriate, and the press by every known Government in proportion to the amount of money and patronage at its disposal; while happily no actual Government has anything like the power for crushing out independent thought which it would possess under full-blown Collectivism.

A thinker of a very different order from Burke, Jeremy Bentham, favoured at one time the maintenance of a body of tax-supported clergy as forming, so to speak, an advanced guard of the law—

“ They have no power against offences, but they combat the vices from which offences originate, and thus render the exercise of authority more rare by maintaining morals and subordination. If they were charged with all the functions which might properly be assigned to them in the education of the inferior classes, in the promulgation of the laws, in the performance of divers public acts, the utility of their ministry would be more manifest.”

He considered that “ in this point of view, even those who do not acknowledge the truth of religion cannot complain of being called upon to contribute toward its support, since they participate in its advantages.” In case of a great diversity of worship and religion, he proposed to apply the contributions of each communion to the support of their own Church, in the hope that “ a useful emulation would result from their reciprocal efforts,” and that “ the balance of their influence would establish a kind of equilibrium in that fluid of opinion subject to dangerous tempests ”; but how this was to be reconciled with treating the ministers of all denominations as Government servants, he omitted to explain. It is, for instance, by no means a forced supposition that the poor and ignorant part of the population may be mainly Catholic, while the more wealthy and intelligent are mainly Protestant. In such a case the public interest would clearly require “ the advanced guard of the law ”

to be in greatest force among the Catholics, whereas under the proposed scheme the contributions of the wealthy Protestants would be only available where they were least wanted. Nor would liberty and equality be really preserved by converting what were previously voluntary contributions, applicable to those devotional purposes to which the contributors themselves attached the greatest importance, into compulsory contributions to pastors henceforth responsible to the Government, and charged with additional duties of a more or less secular and utilitarian character.

It may have been owing to a sense of these difficulties that Bentham's last word on the subject was for disestablishment pure and simple. In his "Constitutional Code," the great work of his old age, we read—

"For the business of religion, there is no department ; there is no Minister. Of no opinion on the subject of religion does this Constitution take any cognisance. It allows not of reward in any shape for the professing or advocating of any particular opinion on the subject of religion. It allows not of punishment in any shape for the professing or advocating of any particular opinion on the subject of religion." . . . "To establish religion is to establish insincerity."

Evidently this principle leaves no room for contributions levied forcibly by the State from the members of each sect for the support of their own Church. The same "Constitutional Code," however, does make provision for a Minister of Public Instruction, who is to inspect, and in some slight degree to control, existing educational establishments, whether maintained by "sublegislatures,"¹ associations, or individuals, and among other things he is expressly enjoined to report, apparently with a view to punitive action by the Legislature, any attempt to

¹ This mention of sublegislatures seems to imply the possibility of a local educational rate ; but there is no direct mention of such a thing, still less of any educational provision out of the general taxes.

bribe or compel persons to make profession of any particular opinion on any subject, especially morals, politics, or religion; and he must himself, on the other hand, scrupulously refrain from interfering with the opinions professed and taught in any seminary, otherwise than by reporting to the Legislature any case in which the commission of a crime may seem to be directly traceable to the teaching of some erroneous opinion.

Such being the abstract opinions of the master, his most faithful disciple, James Mill, probably considered that he was substantially applying them to the concrete case of the Church of England, when, in 1835, he proposed, either as intrinsically preferable to disestablishment or as more within the range of practical politics, the utilisation of the State clergy for work which would consist, to use his own words, "in supplying all possible (non-coercive?) inducements to good conduct." The parish clergy were to be appointed by the Minister of Public Instruction, and to receive approximately equal salaries from the State, and the bishops were to be converted into simple Government inspectors, at higher but still very moderate salaries, laymen being employed by preference for this latter function. But in truth the distinction between layman and priest would almost disappear, "it being a fundamental part of the scheme that the inculcation of dogmas should be forbidden, as suborning belief and tending to make men liars"; and religious ceremonies were also apparently to be dispensed with. As to their one positive duty of moralising the people—

"No general rules could be given for the work, but tests might be applied for results." . . . "We would give annual premiums to those ministers in whose parishes certain favourable results were manifested; the smallest number of crimes committed within the year; the smallest number of lawsuits; the smallest number of paupers; the smallest number of uneducated children; in whose parishes the reading-rooms were best attended and supplied with the most instructive books."

The only immediate effect of this drastic proposal was to damage the magazine in which it appeared. It has been recently quoted as proving that the "philosophic Radicals neither understood the England in which they lived nor foresaw the England of the immediate future."¹ It is really open to a more fundamental objection than its incongruity with the state of public opinion, or the balance of parties, at any given moment. Even if by a miracle all prejudice had been allayed, and all parties had agreed to give the scheme a trial, it must have failed through its own inherent defects. It was a scheme for creating a class of well-paid public servants with duties so ill-defined that no inspector, with or without the title of Bishop, and with or without the advantage of apostolical succession, could possibly pronounce a judgment of any value as to whether they were well or ill performed. In attempting to measure results by any or all of Mill's tests, he would have first of all to determine how much of the statistically indicated improvement or deterioration in a given parish was attributable to the action or inaction of the incumbent, and how much to causes altogether beyond his control. Furthermore, seeing that whatever credit is given to the parson must be so much taken away from the police, the magistrates, and the workhouse authorities, it is not easy to imagine a more potent instrument than the episcopal report for the stimulation of envy, malice, and all uncharitableness. Practically the bishop, or inspector, would find himself driven, by the invidiousness and utter futility of inquiry into results, to award praise or blame according to his judgment of the parson's methods; but when it comes to judging *a priori* as between different methods of promoting sound morality, it is clearly impossible to maintain neutrality as between different schools of religion and philosophy, even if impartiality had not been already thrown to the winds, and a privileged posi-

¹ Dicey, "Law and Public Opinion in England," p. 322.

tion assigned to a not very numerous class of thinkers, by the express prohibition of two such ancient and popular methods as ritual and dogmatic religious teaching.

Less offensive to the existing State clergy than James Mill's scheme, but even more objectionable from the point of view of the lay taxpayer, is what I may call the Ultra-Broad-Church proposal that they should be relieved from all doctrinal subscriptions, and from the obligation to use any particular formularies in public worship, while continuing to be supported out of public revenues and to enjoy the prestige of State patronage. It has been warmly advocated by more or less unorthodox clergymen within the Anglican Church, such as Dean Stanley and Bishop Colenso, as well as by ministers altogether too heterodox to be included within it, such as Voysey and Martineau, but its reception by the laity has been cool in the extreme, and for very good reasons. As it is they who have to pay the piper,¹ they naturally prefer as a rule to call the tune, which they can only do in one of two ways : either by placing all Church organisation on a voluntary basis, or else by exercising through Parliament a collective control over the doctrine and ritual of the State-paid clergy. The Protestant layman will naturally ask why Catholic priests should be paid with his money for performing Mass, conducting the confessional, and declaring the conditions of papal indulgences, in a State-provided building ; the Catholic will object with equal reason when called upon to contribute to the stipend of a follower of Mr. Kensit ; while Jews, Unitarians, and Agnostics will as naturally prefer to spend their money for refuting rather than for propagating either kind of orthodoxy.

¹ The compulsion to contribute is in the present state of the law indirect, but none the less real. No taxes go directly to the support of the clergy (except in the case of a few chaplains), but the tithes are national property which would be available in relief of taxes if it were not appropriated to the support of the parochial clergy.

Closely akin to the policy of so-called comprehension, and open to the same objections of principle, but less palpably irreconcilable with ordinary modes of thinking about religion, is the policy of concurrent endowment, perhaps best exemplified by the Concordat of the first Napoleon, which remained in force during practically the whole of the nineteenth century, but has lately been exchanged for the policy of complete separation between Church and State. It was a bargain made by the State primarily with the foreign head of the great Catholic communion, to which the vast majority of Frenchmen professed to belong, but also with the three organised bodies next in importance, namely, the Calvinistic Protestants, the Lutheran Protestants, and the Jews. Over the first-named the Civil Government reserved to itself a strictly defined amount of patronage and control ; the other three were dealt with as purely self-governing bodies, on the footing of their pre-existing constitutions, which, however, became henceforth unalterable except with governmental sanction. But all four received annual subsidies from the Government, thus practically giving hostages for "good behaviour" from the police point of view. And now, after a century of this régime, Frenchmen are resolved to have done with it. And no wonder ; for the features that stand out most clearly from that long experience are : (1) the unabated hostility of the State-paid Roman Catholic priesthood towards all the more liberal tendencies of their lay paymasters ; and (2) the stagnation of the Protestant Churches, unable to alter their terms of communion, or otherwise reform themselves, without assistance from an unsympathetic Government.

It is true that a very able and generally sound thinker, M. Le Roy Beaulieu, denounces as childish or pedantic the logical objection to subsidising four contradictory creeds, of which three at least must be false ; and argues that what concurrent endowment really implies is

merely the judgment of the State that "worship and religious instruction, even under different forms and with dogmatic variations, exercise a wholesome moral and religious influence." But he himself admits that the separation of Church and State was justified in the United States of America by the facts of their history and the multiplicity of their sects, and he does not and cannot assert that in his own country Catholics and Protestants had habitually recognised each other as allies working for a common cause. Still less does he attempt to fit into his system the seven million or so of Frenchmen who refuse to be registered as belonging to any religious communion. It is certain that many, and probable that most, of these recusants regard the dominance of Catholicism as one of the greatest curses to the country, and equally certain that this feeling is reciprocated by the Pope and most of the clergy. The freethinkers believe that secular education without any theology at all would have better moral effects than any of the hitherto endowed theologies; how could they be expected to be satisfied with a system of concurrent endowment which left them out in the cold, and required them to pay for the inculcation of beliefs which in their view are all false and all in different degrees demoralising? Now the tables are turned, and freethought, or atheism if you prefer the term, is in effect endowed by a system of tax-supported schools in which the name of God is not allowed to be mentioned. That the Catholics must bitterly resent this goes without saying, but they have only themselves to thank for it. They sowed the wind when they accepted the insidious gift of Napoleon I., and they are now reaping the whirlwind.

The result is, broadly speaking, that every consideration which tells against State education tells also against State religion, while there are additional arguments against the latter which do not apply to the former.

CHAPTER VII.

STATE PATRONAGE OF SCIENCE, ART, AND LITERATURE.

IF it is wrong to compel all to contribute towards the training of the young according to methods approved by the majority, and towards a common worship based on principles which are not universally admitted, the case would seem to be still stronger against resorting to compulsory taxation for such purposes as the extension of the bounds of knowledge, or diffusion among the many of knowledge now confined to the few, or cultivating and gratifying the public taste through painting, music, and the drama ; because the bearing of all these things on the defining and enforcing of justice is still more indirect and debatable.

Yet here also, as in the preceding cases, it is necessary to distinguish between the State going out of its way to take on a new branch of business, and the incidental utilisation for some other purpose of machinery which would in any case have to be provided for necessary governmental work.

SCIENCE.

Thus we noticed in Chapter II. how essential to the success of governmental operations, whether warlike or peaceful, are good roads and other means of communication by land and water ; how necessary it is, therefore, that the Government should provide these at the public

expense for official purposes; and how natural that, having been so provided, they should be used, with or without payment, by the public generally. It is no less true that Government needs, for the successful performance of its proper task, all the light that is obtainable from many different branches of science. It may, or it may not, be able to buy in the open market the information and the skilled assistance that it requires for any given purpose. If it cannot, if for instance the maps and charts published by private enterprise are not complete enough for its purpose, it will be making a wise use of public money in instituting its own researches and surveys. For a great sea Power like England, with a world-wide commerce to protect, there is hardly a square league of salt water anywhere that its warships may not have occasion to traverse at some time or other in the course of their duties, and it would be pedantic to inquire whether any given bit of Admiralty surveying is intended primarily for the safety of His Majesty's navy, or for that of the merchant ships which look to that navy for protection, and whose commerce supplies the largest part of the taxable wealth of the nation. Then again, seeing that mechanical and chemical inventions play a continually larger and larger part in modern warfare, it is essential that Government should pay for the best expert advice as to the present state of knowledge on these subjects, and not altogether unreasonable that it should occasionally bear the expense of some definite bit of research on the solution of which the sort of armament required may depend. But incidental outlays of this sort are a very different matter from the systematic subsidising of science in general with the professed aim of making the whole community wiser and better. To labour the point that the latter task is unsuited to a force-employed organisation, would be to go over again what has already been said concerning State education. Nor, indeed, is it easy to distinguish in the Civil Service

Estimates the grants for research from the grants for popular education.

On the principle assumed throughout this treatise, the effect of appropriating public money to such objects is that every citizen who, rightly or wrongly, cares for something else more than for the promotion of science, and every citizen who, though willing to help scientific research, prefers, rightly or wrongly, to do so through some other channel than that of the State, suffers unjust spoliation, and is deprived, *pro tanto*, of that security for his lawfully acquired property for the sake of which he pays his taxes. Scientific research, like all other useful activities, is sure to flourish best in an atmosphere of freedom, and whatever organised co-operation is needful can be obtained with patience through scientific societies.

ART.

Here again, so much of it as gathers naturally round the necessary functions of the State is unobjectionable. We do not want to see all government and municipal buildings plain brick and mortar, the Sovereign going to open Parliament in a lounge suit and a bowler hat, the troops parading without bands or colours, the judges stripped of their wigs and ermine. In the justice-enforcing business, as in any other, if a reasonable amount of ornament and pageantry helps the workers to take a pride in their work, the money is well spent. And inasmuch as this particular business, even when most strictly limited, is considerably more solemn and arduous than (let us say) shoemaking ; inasmuch as it has to do with issues of life and death, with the battlefield and the scaffold, with the extremes of love and hate, of heroism and baseness, as well as with vast and complicated economic problems ; it is inevitable that the heart and the imagination should play a part in it as well as the reason, and of this fact those who control the various

State departments must constantly take account. But sculpture and painting, music and poetry, should depend upon State patronage no further than the State actually and directly avails itself of their aid ; and by the State I mean here simply the Government, not the electorate. For the Government to employ whatever means suggest themselves for encouraging its own servants, its soldiers and sailors, its policemen and its judges, to realise more fully the spiritual and poetic aspects of their often disagreeable duties, is one thing ; it is quite another thing to aim at developing the artistic and poetic sentiments of the public generally at the expense of all, but in the direction that happens to be congenial to the party in power. All the objections already urged against State education and State religion apply here also in full force.

In many continental countries the theatres are financed and controlled by the State or the municipality, and it is often proposed to introduce the same system here. The proposers of such schemes should be asked first of all whether their object is to supply playgoers with the sort of amusement that they like, and would pay for themselves if they could afford to do so, or to improve their taste and morals by bribing them to attend performances of a different character from those that they would spontaneously patronise. If the former, the proposal must stand or fall with the general policy of employing taxation as an instrument for equalising fortunes ;¹ if the latter, it must stand or fall with the least defensible of all forms of State education, namely, the instruction of adults ; which cannot be made compulsory without gross tyranny, and is not likely to reach those who most need it without compulsion. Otherwise, the case seems to present no special features differentiating it from those already considered.

¹ As to this, see Chapter XI.

MUSEUMS AND FREE PUBLIC LIBRARIES.

What of the £180,000 a year spent out of the national taxes on the British Museum, including its magnificent library and reading-room, and on other museums and art galleries in the Metropolis, and what of the similar rate-supported institutions all over the United Kingdom ? There appears to be no difference in principle between the provision of books for readers and provision of other exhibits, duly arranged and catalogued, for the inspection of students interested in the fine arts, in the industrial arts, in archæology, or in physical science ; so we may content ourselves with examining the ethical aspect of Free Libraries, beginning with the great central library in Bloomsbury.

No one is likely to dispute the great convenience to scholars of being able to consult in one accessible locality every book, pamphlet, and newspaper published in the United Kingdom during the last half-century, besides a vast number of other works acquired by gift or purchase independently of the Act of 1842. But the very fact that it is so great a convenience raises the question, why it should not be paid for, like other conveniences, by those who enjoy it, instead of distributing the burden over the whole community, readers and non-readers alike. That by itself would be sufficiently difficult to answer. It is no answer to say that the whole community benefits by the increased facilities afforded for the production of useful books, or instructive newspaper articles, the writers of which could not afford to pay an admission fee of even sixpence a day ; for the cost of producing these things can be, and ought to be, thrown, as in other trades, on the consumer, by raising the price of the commodity up to the point at which it will afford adequate remuneration to all concerned in its production. But in this particular case there is yet a further exaction of questionable justice to be noted. Only a part of the

cost of providing free reading for the frequenters of the British Museum is apportioned, like other national charges, among the whole body of taxpayers according to their means; the remainder is thrown upon the limited class of publishers, who are required to supply gratis to the trustees one copy of every book or other publication issued by them.¹ This peculiar form of taxation in kind is much the same in principle as if the Government were to take without payment one loaf a day from every baker's shop for the use of His Majesty's army; but owing to the lightness of the impost it provokes few complaints, and thus its anomalous character escapes notice. Indeed, it may be argued that it operates in a roundabout way as a mitigation rather than an aggravation of the original wrong, because its ultimate incidence is not on the publishers, who can allow for it in fixing the price of the book, and the remuneration of the author, but on their customers, who are the class primarily benefited by the better supply of literature which is supposed to result from the assistance afforded to authors and journalists by free access to so complete a library. To this small extent the non-reading public suffer less than they otherwise would in the way of being forced to pay for the gratification of other people's tastes. One wrong, in fact, partially cancels another, but in a clumsy and uncertain fashion, tending to confuse the sense of right among all the different classes concerned. It would be much simpler and juster to pay the publishers for the volumes supplied, and to fix the charge for admission to the reading-rooms at a figure which would make the institution self-supporting. If, as is not unlikely, the result of the experiment were to prove that there was no such figure—in other words, that an all-embracing reference library was an undertaking that

¹ The same privilege belongs (as is well known) to the Universities of Oxford and Cambridge, but for lack of house-room is only exercised in the case of books specially wanted.

could not be made to pay its expenses, the next step might be to invite voluntary contributions from wealthy individuals and learned societies interested in the diffusion of knowledge, in order to make up the deficiency. Failing this, the proper conclusion would be, that the State ought to refrain altogether from meddling with such a business, and that it should be left to take its chance as a possible subject for private enterprise.

It may occur to some that this course might well have been adopted on *a priori* grounds without experiment. It is by no means obvious that any public benefit at all commensurate with the expense is likely to accrue from trying to preserve for ever, duly classified and catalogued, exemplars of all the rubbish poured forth year by year from the printing-presses of the United Kingdom, on the chance that one sheet in ten thousand may be turned to good account by some competent writer who would otherwise have missed it, or that, in an age which has carried to perfection all the arts of advertising and of commercial co-operation, the State has any appreciable advantage over joint-stock enterprise in providing all really important aids to research. But the British Museum is there. It is not a question of starting a new national establishment, but of winding up or continuing a going concern. The line of least resistance, and the only line which has any chance of finding favour with the British public, is that of keeping up the establishment while gradually shifting the burden of its maintenance from the shoulders of the general taxpayer on to those of the individuals actually making use of its treasures.

The tax levied in kind might possibly be defended as a police measure, to facilitate inquiries by the Government as to any ground that may exist for criminal prosecution of a publisher, or as to any published statement that may seem to require official contradiction. There would be nothing against our principles in such

a regulation, any more than in the regulations as to the numbering of taxi-cabs and motor-cars, or as to registration of births, deaths, and marriages. But if put on that ground, the rule should be that every copy of every book, pamphlet, etc., should be deposited at the Home Office in the first instance, whence they might be transferred after official inspection to the National Library; the authorities of which institution should have power to destroy, after a limited period, any printed matter of which the probable historic value was not, in their judgment, commensurate with the cost of house-room and custody.

All that has been said concerning the tax-supported library at the British Museum, except the peculiar tax levied in kind on the publishers, will apply to the rate-supported libraries up and down the country. The institution of such libraries was, if the above reasoning is sound, a mistake, and those ratepayers who have up to this time refused to adopt the Act have shown themselves wiser than those who have allowed themselves to be persuaded into doing so. Why those ratepayers who happen to have a taste for miscellaneous reading, and leisure to indulge in it, should expect to have that taste gratified at the expense of fellow-ratepayers who take their recreation in other shapes, or who have no leisure for any recreation, or who get the books that they want elsewhere, is a question at least as difficult to answer as the corresponding question respecting readers in the British Museum. But it would be easier in this case than in the other to redress the injustice without breaking up the numerous Free Libraries that have come into existence under the Act, often with large help from voluntary sources. There would be no difficulty, if only Parliament could be induced to sanction such a measure, in separating the library rate from the (so-called) "poor's rate," and making it voluntary, as the Church rate is, and as we have already suggested that the education rate might

be. Then the library would expand or contract according to the degree of public confidence commanded by the Committee of Management. The voluntary rate, and the occasional extra donations from public-spirited citizens which would come in at least as freely as they do now, might or might not be supplemented by a small charge for admission. That would depend on the prevailing sentiment of the subscribers, which would probably be in favour of retaining the original "free" character of the institution.

I repeat that the case for tax-supported museums and art galleries must stand or fall with that for free libraries, and does not require separate discussion. The case of the National Physical Laboratory has been already considered in Chapter III.

DIRECT PENSIONING OF AUTHORS.

When the above-mentioned indirect subsidies to authors have been ruled out, it goes without saying that direct pensioning of authors finds no place in our catalogue of legitimate State functions. It is true that we might have lost the table-talk of Dr. Johnson if our theory had been accepted in the reign of George III., and that we might have lost some fine poems—and gained others—if Tennyson's choice of subjects had not been influenced by a sense of his special obligations as Poet Laureate. No one is likely to weigh these and such-like trifles in the balance against the great principle of Voluntaryism who believes in that principle; and no one who is prepared to justify Dr. Johnson's pension and the Poet Laureate's salary of £300 a year will be able to give any intelligible reason for stopping short of a hundred times that expenditure. No tolerably consistent thinker who has gone thus far will be inclined to stop short of the ideal of Mr. H. G. Wells,¹ who would have the State endow some four hundred authors at a time, each at the

¹ "Mankind in the Making," p. 385.

rate of £800 or £1000 a year, on condition of surrendering their copyrights, so as to remove the temptation to write in a hurry and with a view to immediate popularity. The obvious objection to this proposal, that the pensioners of any Government, so far as they deal with subjects with which that Government has anything to do, will either be chosen from among those whose writings have already shown a tendency conformable to the views and interests of the persons composing the Government, or else from among the persons whose future support is hoped for in consequence of the favour conferred upon them, and that thus the healthy influence of independent criticism will be impaired, did not escape the ingenious author; but he endeavours to meet it by making the selection a "dispersed duty," not entrusted to any regular Government department, but delegated partly to different universities, partly to the Royal Society, partly to a hypothetical guild of authors, and so on. This is a mere evasion of the difficulty. Either these learned bodies, these privileged dispensers of patronage, are in touch with the Government of the day, or they are not. If they are, that is to say, if an appeal lies from their decisions to the law courts or to any State authority, or if their own corporate existence is in any way dependent on Government grants, the discouragement to incisive criticism of official doings, and to the free expression of ideas at variance with those of the dominant party, will be almost as great as if the grants were awarded directly by a departmental authority. If they are not, we have the dangerous anomaly of expenditure of public money without corresponding public control. That a free book-market does not at present work out perfectly just results, in the sense of automatically securing the largest material rewards to the best writers, may readily be admitted; but the remedy lies not in State patronage, which in ultimate analysis is only patronage by the commonplace majority, but in the cumulative effect of a

multitude of individual efforts to write better, to read more critically, and to help the circulation of the best books. If only the State will do its whole duty as a justice-enforcing association on the lines indicated in the preceding chapters, wealth will be more honestly earned, and more of it will therefore get into the hands of good and capable men, who will either employ their leisure in writing good books without pay, or else spend their money in encouraging good literature and good journalism. We shall have more Gibbonses and Grotes and Ruskins on the one hand, and more Franklin Thomassons and Carnegies on the other ; while as regards the readers, with wages rising for every kind of honest work, and with the way of transgressors, of the thief, the cheat, and the parasite, made continually harder, there will be more purchasers of wholesome, and fewer of unwholesome, literature.

There is still one way of patronising literature, science, and art, which seems at first sight to have the great merit of cheapness, and which has found favour, probably for this reason, with all monarchical, and with some republican governments. But inasmuch as this patronage is only one of the objects of the device in question, it will be convenient to devote a separate chapter to the consideration of "The State as Fountain of Honour."

CHAPTER VIII.

THE STATE AS FOUNTAIN OF HONOUR.

“ The King is likewise the fountain of honour, of office, and of privilege ; and that in a different sense from that wherein he is styled the fountain of justice ; for here he is really the parent of them. It is impossible that government can be maintained without a due subordination of rank ; that the people may know and distinguish such as are set over them, in order to yield them due respect and obedience ; and also that the officers themselves, being encouraged by emulation and the hopes of superiority, may the better discharge their functions ; and the law supposes that no one can be so good a judge of their several merits and services as the King himself who employs them. . . . From the same principle also arises the prerogative of erecting and disposing of offices ; for honours and offices are in their nature convertible and synonymous. All offices carry in the eye of the law an honour along with them ; because they imply a superiority of parts and abilities, being supposed to be always filled with those who are most able to execute them. And, on the other hand, all honours in their original had duties or offices annexed to them ; an earl, *comes*, was the conservator or governor of a county ; and a knight, *miles*, was bound to attend the king in his wars. . . . And as the king may create new titles, so he may create new offices ; but with this restriction, that he cannot create new offices with new fees annexed to them, nor annex new fees to old offices ; for this would be a tax upon the subject, which cannot be imposed but by Act of Parliament.”—Blackstone, i. 272.

I HAVE prefixed this extract from the standard eighteenth-century text-book of English law, because of the sidelight thrown by it on our present theory and practice with regard to titles of honour. Those conferred by the King were originally inseparable, at least in theory, from actual employment in the King's service. And

the King's service might mean what we should call the service of the State, or might mean some domestic or semi-domestic function connected with the royal household. Instances of the latter are : the Lord Chamberlain, originally the superintendent of the King's private chambers, now the official censor of stage plays ; the Lord High Constable and the Earl Marshall, both words originally meaning the keeper of the King's stables. In pre-Revolution days, when little or no distinction was made between the public and private expenditure of the Sovereign ; when his patronage of the arts, and his works of piety and charity, might be alternately, and with about equal propriety, regarded either as exemplifications of an enlarged conception of the province of the State, or as expression of a wealthy individual's personal tastes and emotions, it would never occur to any one to raise the question which we have now to examine, namely, whether titles of honour conferred by the Government ought properly to relate only to merits displayed in the actual service of the Government, or should, as now, be given in recognition of any action, or course of action, that, in the opinion of the State, is exceptionally useful to the public at large, or redounds to the credit of the nation, whether done in an official or in an unofficial capacity.

Jeremy Bentham, in one of the most remarkable chapters of his "Constitutional Code," set forth some weighty reasons against entrusting the head of the State with any power at all of conferring what he calls "factitious honour." The only form of public honour that he would sanction was the public recording, after judicial investigation, of such exceptional services as would naturally, being known, attract to the performer thereof an exceptional amount of general respect and goodwill. Holding this view with regard to these titles of honour which he regards as "primarily seated"—that is, enjoyed by the very person whose merits^r were

meant to be thereby recognised, he, of course, condemns *a fortiori* all hereditary (in his peculiar terminology "extravasated") honours. But while he notices this difference as an aggravation of the abuse, he fails to observe that even on his own principles the distinction between official and unofficial services remains to be examined. For it is quite possible to regard even a bare record of services as an impertinence on the part of the Government, if the services were not rendered to the State, and had no connection with the business of defining and enforcing justice. The judicial investigation, on which he insists as a preliminary, will necessarily involve some expense to the taxpayer. Why should I, a humble taxpayer, with no pretensions to exceptional merit, be mulcted of my earnings in order to defray the expense of satisfying public curiosity as to whether my neighbour did or did not really do something exceptionally praiseworthy? Why should the United States Government pay the cost of determining whether Commander Peary, or Dr. Cook, or both, or neither, reached the North Pole? And supposing they did so, what special call or fitness has that Government for pronouncing upon the social value of the achievement? Bentham's main objection to titles of honour, whether for life or hereditary, is that to allow them is to place in the hands of the persons composing the Government an engine of corruption. Every sort of power is, of course, liable to abuse, and he does not deny that this risk must be run to the extent of entrusting somebody with as much power as is required for efficient administration; but he argues that to confer honour without power is to increase the risk of abuse without any corresponding increase of efficiency. He points out, quite rightly, that the appearance of economy in eliciting zealous service by dangling ribands and patents of nobility before the employees instead of cash payments is deceptive; the taxpayer suffers more in the long-run, both in pocket and otherwise, by the

diversion of a certain amount of respect and goodwill from the more deserving to the less deserving. On this two observations occur. In the first place, the mischief apprehended depends upon the titles and insignia of honour being distributed arbitrarily, without reason given, or without sufficient investigation. Unless it is shown to be impossible to secure adequate constitutional safeguards against this abuse, it is surely premature to bar all inquiry as to the advantages of this particular way of rewarding merit. Suppose, for example, that we admit for the sake of argument the practicability and expediency of Bentham's notion of public recordation of services judicially proved. If the plan is to answer its purpose, some method must be found of cataloguing and classifying the rapidly accumulating mass of eulogistic records, and the catalogue must be rendered accessible and intelligible to all who desire to know to which of their fellow-citizens they are invited to show special respect, and why? It must be made possible to discover, without wading through ponderous volumes, who are publicly certified as first-rate, and who as second-rate, in all the different departments of public service. Some symbol, or some combination of letters, will have perforce to be invented in order to direct the anxious inquirer to the particular species of merit in which he happens to be interested, so that he may not go stumbling about among successful diplomats, or inventors of aeroplanes, when he wants to make acquaintance with the heroes of the battlefield, or *vice versa*. And when these symbols are used in the official book of honour, or even if they are not, who is to prevent them from being used unofficially elsewhere? What is to prevent any individual whose name happens to be in that chapter of the Book of Fame which records feats of desperate valour from advertising the fact by means of letters after his name on his visiting card, which will convey the same idea as that now indicated by "V.C."?

Nothing, except natural modesty or fear of public opinion; but as likely as not public opinion would come to favour the practice instead of discouraging it, in order to simplify the process of discovering "Who's Who." Should this fashion become general, with or without official sanction, we should have under another name, as a natural development of Bentham's own idea, something practically equivalent to a system of titles of honour.

I much doubt, however, the utility and efficacy of the kind of judicial investigation contemplated by Bentham. Consider such honours as the C.B., K.C.B., and G.C.B. They are ordinarily conferred, not for any one remarkable achievement, but for good work done during a long series of years, in either the military or the civil service of the Crown. What sort of tribunal, taking evidence in legal fashion, would be likely to arrive within any reasonable space of time at a valuation of such merits which would command as much public confidence as the advice tendered to the Crown by a responsible Cabinet Minister does under the present system? And what reputable counsel would care to play the part of *advocatus diaboli* in such a trial?

The extreme jealousy and suspicion shown by Bentham towards every form of Government patronage was natural enough, considering the times that he had lived through and was living in when he wrote this, his latest work. He had no direct experience of any régime in which the distribution of honours was not used unblushingly either for the purchase of support to the dominant party, or for the personal gratification of the Sovereign. Imperfect information led him to idealise somewhat the state of politics in the United States of America, whose Constitution expressly forbids the granting of any title of nobility; nor could he foresee that, in the course of half a century or so from his death, the balance would be reversed in respect of this particular evil as between the untitled rich of the great Western Republic and

title-loving Britain. But the parts in the drama of corruption were to some extent inverted. *Here*, Bentham's lifelong experience, and his reading of history, told him chiefly of kings and their ministers using the public revenues, and the store of "factitious honour" at their disposal, for winning persons of wealth and influence to the support of their policy. *There*, the most crying evil was the employment of private wealth, acquired mostly in trade, to corrupt the comparatively needy class of professional politicians, and the no less needy class of journalists, so as to twist the course of legislation, administration, and adjudication in the direction most favourable to their own private schemes of money-making.

Looking to the present standard of political morality among British statesmen, which is widely different from what it was during any part of Bentham's long life, and to the very different example set by the late King and his mother as compared with their last five predecessors, it seems to me that the advantages are great, and the risks of abuse comparatively small, of our present practice of entrusting the distribution of honours, including the power of creating new orders of merit, to the Sovereign as advised by his responsible ministers, *so far as regards non-hereditary honours for services directly connected with the proper functions of the State*. For titles of honour transmissible to the heirs *ad infinitum* of the original recipient I can see no ethical justification whatsoever, under present social conditions. The practice had a legitimate origin during the prevalence of feudalism, when every title implied, and was inseparable from, some definite authority and responsibility, and when the continuance of fiefs in the same family, so long as a fit member of that family was forthcoming, was the least objectionable arrangement that the anarchical temper of the times would admit. Separated from hereditary office, and also from land tenure, hereditary

titles have ceased to serve any useful purpose whatsoever, unless as a clumsy and precarious device for keeping alive the memory of the (real or supposed) public services of the original recipient. It is, however, the second condition in the sentence above italicised that here chiefly concerns us.

Our principles forbid us to admit that the State can properly be the fountain of honour for any save its own employees. While I find it perfectly reasonable that the hands of the Commander-in-Chief and of the Secretary for War should be strengthened for their task of maintaining the efficiency of the army by being permitted to apportion not only pay and power, but no less coveted public honours, according to their estimate of merits with which it is their special business to make themselves acquainted, I fail to see in the official position of the Sovereign or of the Prime Minister any natural presumption of fitness for the task of determining whether the poetry of a Tennyson deserves a peerage, or whether the acting of an Irving or a Beerbohm Tree is fitly rewarded with a knighthood. The higher our estimate of the social value of literature and the arts, the more unwilling shall we be to allow any politician, or combination of politicians, to dictate to us an order of precedence in which poets, artists, philosophers, and scientific discoverers shall be sifted in and out among successful generals and admirals, learned judges, City magnates, party Whips, and dignitaries of the Established Church. As the proper body to single out for distinction a military or naval officer is the body responsible to the nation for its external safety, so it is the business of those specially interested in any art or science to combine in whatever way seems good to them for the purpose of giving due honour to pre-eminent merit in that particular line. If it is ever absolutely necessary to settle precedence among persons bearing different titles of honour conferred by different and independent

bodies, for wholly different kinds of merit, the nature of the occasion that brings them together will generally suggest the right solution of the problem. For instance, I read lately of a French Admiral meeting one of his subordinate officers at a literary gathering where the latter was the chosen lecturer, frankly acknowledging that the same deference was here due from himself to the Lieutenant as he would have expected from the latter on his own quarter-deck. This is just what one would expect in any gathering of gentlemen on either side of the Channel.

The recently instituted "Order of Merit" is a veritable *reductio ad absurdum* of the modern theory of governmental omniscience. The list of members for 1910 comprises the following :—

Generals, British	.	.	.	4	} Fighters	.	.	9
„ Japanese	.	.	.	2				
Admirals, British	.	.	.	2				
„ Japanese	.	.	.	1				
Statesmen who are also men of letters				2	} Civilian public ser-			
Diplomatist and administrator	.	.	.	1		vants	.	.
								<hr/>
Total, public servants								12
Poet and novelist	.	.	.	1	} Unofficial	.	.	10
Scientists	.	.	.	5				
Artists	.	.	.	2				
Nurse	.	.	.	1				
University Professor	.	.	.	1				
								<hr/>
								22

The late Miss Florence Nightingale, here classified as "nurse" and "unofficial," might perhaps be counted as a public servant in respect of the two most memorable years of her life, in which she organised the nursing service for the Crimean War, though the other activities of her long and useful career were almost entirely unofficial. Sir Joseph Hooker, included among the scientists, held at one time a Government appointment as Director of Kew Gardens, but the department of botanical research lies outside the proper province of

Government as here defined. The same remark will apply to the occasional employment of most, if not all, of the scientific members of the Order, as well as of the University Professor, on Royal Commissions connected with either research or education. It is not as Commissioners, but as physicists, botanists, astronomers, or scholars that they are singled out to be placed in a row with Field Marshals and Admirals of the Fleet ; as though so much prowess in war could be weighed in the balance and found equal to so much mastery of the physical laws of the universe, or to so much devotion to the relief of human suffering ! For the inclusion of foreign military officers in a British Order of Merit, the best that can be said from our point of view is that we try to think of our own and all other tolerably governed States as "justice-enforcing associations," labouring on independent lines for the same beneficent end ; that this charitable assumption approximates to actual fact where the particular cause in which some foreign general has fought with distinction commends itself to our sympathies as a nation, and where, consequently, the service rendered directly to his own Government is indirectly rendered to ours. It is, of course, well understood that no Government allows its servants to accept foreign honours without its permission being first asked and obtained. Under these conditions this very common practice seems to be a tolerably harmless exception to the sound general rule of not judging other people's servants.

What of such minor distinctions as the Albert Medal, and the new Edward Medal, bestowed by the late King for acts of devotion and courage in civil life ? The latest instance at the time of writing this chapter was a Second Class Albert Medal, presented by the late King in person to a Welsh lad of sixteen, for saving a workman's life at imminent risk to his own, on the occasion of the falling in of a trench at Newport. Such acts

of gallantry have evidently nothing to do with the enforcement of justice. The titular head of the justice-enforcing association has officially nothing more to do with such incidents than any other citizen ; but he has as much right as any other citizen to give expression to generous sentiments whenever anything occurs to excite them. The conspicuous position, which must be his on the narrowest possible view of the province of the State, cannot fail to give a certain importance, in the eyes of the general public, to anything said or done by him unofficially. The practice, introduced first, I think, by Queen Victoria, and carried on by King Edward, of sending a public message of congratulation or condolence to the parties concerned on all sorts of interesting events, from the birth of triplets to an Antarctic expedition, and from a colliery accident to the death of a great writer, is open to no sort of objection ; and if it helps to strengthen the hold of the Royal Family on the affections of the people, that is a perfectly legitimate result. Conversely, the fact of these extra-official attentions from the head of the State being so highly appreciated is some evidence of general contentment with the working of the governmental machine.

This sort of thing is only a reproduction on a somewhat wider scale of the ordinary social relations between a popular M.P. and his constituents. No one thinks it strange that all kinds of local institutions value such a member's patronage as an advertisement, or that his offers of prizes for their flower shows and regattas are gratefully accepted. It is not a question of making the State a fountain of honour in respect of actions outside its own province, but of leaving the highest and all other public functionaries free to utilise, in the directions suggested by their own private tastes and sympathies, whatever social consideration may happen to accrue to them as the natural consequence of their official position. It is, of course, assumed that the public are equally free

to put their own valuation on marks of esteem bestowed by a highly placed official in his individual capacity. There are, or have been, countries in which any official position would be *prima facie* evidence of rascality, and in which a high-minded citizen would much prefer not to be singled out for special compliment by such persons. But where the national business is on the whole honestly conducted for the protection of honest people, its importance is so great that the legitimate social influence of those responsible for its working must also be considerable, and marks of esteem publicly bestowed by the head of the whole establishment will be proportionately valued.

The substance of this chapter may be summed up in the five following propositions :—

1. For hereditary titles of honour separated from hereditary office there is no possible justification, and for hereditary office there is no justification in any community in which the civic spirit is sufficiently developed to supply adequate motives for social action, with the doubtful exception of the titular headship of the State, for which the advantage of historic continuity, and the difficulty of devising a satisfactory mode of election, may be urged in favour of retaining the institution provisionally where it exists.

2. Personal titles of honour may legitimately and usefully be conferred by the head of the State for personal merit displayed in some branch of the Government service; not excluding the political services of Members of Parliament and Cabinet Ministers, provided that the honours are bestowed under conditions of full publicity and responsibility.

3. The head of the State should have no power to confer titles of honour for services rendered to society in general, outside the sphere of politics and administration. The reputations of scholars, artists, inventors, etc., should be left to find their level in the estimation of

the public, with such guidance as voluntary associations of specialists may supply, but without any official interference. But—

4. As it is open to any individual, alone or in association with others, to take whatever steps he thinks fit for the due recognition of any kind of merit that particularly appeals to him, so long as it is done at his own expense and on his own responsibility, the value of the testimonial to the recipient depending on the reputation of the donor, or on the number and reputation of the associated donors, so it may well be left open to the head of the State to do the same kind of thing, also at his own expense and on his own responsibility, but with whatever extra advantage may accrue to the recipient from the conspicuous position and high reputation of the donor.

5. In a healthier state of society than the present, while honours conferred by the State would still win for the recipient a moderate amount of extra respect and consideration, men and women in general would value much more highly the distinctions conferred by learned, philanthropic, or religious societies specially concerned with some non-official, non-political pursuit.

CHAPTER IX.

THE DUTY OF THE STATE IN RELATION TO CONTRACTUAL OBLIGATIONS.

ONE of the most thoroughgoing exponents of Marxian Socialism, who is for entrusting the State with entire control over all the means of production, would for that very reason cut down its functions on the other side by treating the fulfilment of contracts as a matter with which the State has no concern. His idea seems to be that when all work is directed and paid for by the State the operations of industry and commerce (so far as there is any commerce) will no longer depend upon private contract, and that the State will cease to have any concern with the performance or non-performance of promises having relation to petty pecuniary, or wholly non-pecuniary, transactions—

“The community does not ask Peter to trust Paul; he does it on his own responsibility, and he has no right to come whining to the delegated authorities of the community for redress if Paul proves untrustworthy, or to expect the community to waste resources in keeping up machinery for the purpose of deciding disputes between them, with the chances, after all is done and under the most favourable circumstances, of as frequently arriving at a wrong as at a right decision. The principle once established, that contract rests solely upon honour; that any agreement, tacit or avowed, verbal or written, that I choose to enter into with another man, has no law to back it, must inevitably have a moral effect in the long-run of the most beneficial kind.”¹

With the first branch of this argument we are not here concerned, as we do not contemplate either the total or

¹ “The Religion of Socialism,” by E. Belfort Bax, p. 149.

the partial abolition of private property. But inasmuch as there have been individualist thinkers to whom the sentiment embodied in the last sentence commended itself, it is worth while to examine it a little closely. If it will have a good moral effect to establish the principle that contract rests solely upon honour, why should we stop there? Will it also have a good moral effect to do away with the legal penalties for theft, violence, and murder, and leave it to the honour of every man to abstain from such practices? Or if not, why not? Because, say all except the Quakers and Tolstoyans, general experience confirms what reason led us to expect, that non-resistance to wrong encourages aggression, while individual resistance to whatever each individual chooses to consider a wrong spells anarchy. If the wrong takes the form of a breach of promise instead of an assault, it is none the less a wrong, and may well be the more serious injury, and excite the deeper hatred, of the two. The moral distinction between stealing a ready-made coat from a tailor's shop and refusing to pay for a coat made to order, is perhaps just perceptible, but is surely too fine to make all the difference between State intervention and non-intervention. It is all very well to say that the tailor need not have given credit to the customer, and should have refused to part with the coat except for ready money, and generally that men will learn by experience, if they are let alone, whom they can, and whom they cannot, safely trust. But why are the generous and over-trustful less entitled to protection against the cunning and faithless than the weak in body against the strong and brutal? The very fact that the voluntary observance of agreements is the rule, and their breach the exception, makes it less difficult, but by no means less desirable, to provide for their enforcement against the defaulting minority. As the scale of industrial and commercial operations becomes larger, it becomes increasingly necessary to depend on

the fulfilment of contracts by persons who have no other than business relations with each other. The common sense of the civilised world has long ago pronounced in favour of the general enforcement of contracts; or rather, the very word "contract," as taken over from the Latin by all European languages, denotes properly an agreement which is legally enforceable, and in all modern systems the cases of *nudum pactum*, or agreement which is not a contract, are treated as exceptions requiring to be accounted for. While by no means asserting that such international consensus is infallible, we must certainly require stronger arguments than any hitherto adduced to outweigh it.

The exceptions demanded by our conception of justice are, however, neither few nor unimportant—

1. The agreement must be such as the parties themselves would have regarded, at the time when they made it, as proper for legal enforcement; *e.g.* it would be contrary to the presumable intention of the parties to attach any penalty to the breach of an agreement to dine, or walk, or play golf, with a friend, other than the natural and inevitable consequence of diminished confidence in future promises of the defaulter; while it would be quite in accordance with their presumable intention that the failure of a customer to pay for goods sold on credit should entitle the shopkeeper to some more substantial remedy than the mere refusal to give credit to that customer in future. A case near the border-line is that of an informal promise of marriage. It has often been doubted whether the English Courts have not gone too far in treating the mere expression of matrimonial intentions in a letter or series of letters as constituting a contract for which damages should be awarded. The very fact that the conjugal relation is one which ought not to be entered into without the completest mutual confidence, gives plausible ground for arguing that the promise to enter into it should depend

on that mutual confidence, and on nothing else. On the other hand, a "justice-enforcing association" can hardly be said to have done its work completely if so grievous a wrong as the heartless betrayal of a woman's confidence (or of a man's either, for that matter) is left entirely without redress. Perhaps the best solution would be to deal with the really hard cases as "wrongs independent of contract," the promise to marry being merely one element in a charge of obtaining some gratification or advantage by false pretences.

2. The agreement must have been a matter of free consent, not induced by force or fraud, and the parties must have sufficient mental capacity to understand what they were about, from which it follows that the agreements of children will be in general unenforceable. The detailed working out of these principles—the definitions of fraud, duress, undue influence, and so forth—must be left to professed treatises on jurisprudence; but one caution may be useful in this place. The whole system of modern commerce and industry is sometimes attacked on the ground that the positions are too unequal for fair bargaining between the capitalist employer and the proletarian wage-earner, and in many other cases. But this sort of compulsion is not such as to render the enforcement of the contract necessarily unjust; still less does it justify the State in actually punishing the employer for engaging a workman on terms which it chooses to consider disadvantageous to the weaker party. I am supposing the case in which an adult workman, with his eyes open and fully informed as to all the relevant circumstances, engages himself to do hard, and it may be unhealthy, work for a low wage, simply because he knows that the employer can better afford to go without his labour than he without the pay. Such a bargain is—in the given conditions—as beneficial to the workman as to the employer; and the State will be guilty of injustice in forbidding it, or even in refusing

when called upon to take notice of a breach of the contract, and to afford such redress as the case admits of.¹ The possibility of driving so hard a bargain—in other words, the fact of the workman being dependent for his subsistence on getting this particular job—raises a suspicion—but only a suspicion—that he may be the victim of injustice somewhere ; but it does not raise even a reasonable suspicion that this particular employer is to blame. As between him and the workman the consent is perfectly “ free ” ; the duress, if any, may come from unjust laws, or from the wrong-doing of others, or from the force of circumstances depriving him of other resources.

3. The agreement must not be obviously injurious to either of the parties or to the community. It is on the face of it absurd that the public resources should be wasted in compelling an individual to do mischief. It is on this ground that modern legislators refuse to recognise for any purpose a contract of perpetual slavery, or a contract whereby one person authorises another to kill him, or to do him serious bodily injury, or a promise by one person to pay another for breaking the law. Gambling contracts, whereby the inconvenience suffered by the loser is generally greater than the satisfaction of the winner, and the only mutual gain contemplated is a rather unhealthy form of excitement, have been in all cases unenforceable by English law, and in some cases punishable, since 1845. Contracts in restraint of trade, whereby a man debars himself from exercising some useful talent, are in certain cases rightly declared to be void, as being against public policy. But, on the other hand, there is much point in the oft-quoted remark of an eminent judge, that it is a general rule

¹ There is not much that it can usefully do ; because, on the one hand, the employer will not be much benefited by the workman being sent to prison for breach of his contract, and, on the other hand, the workman gains little by suing for his weekly wage if he can be turned off the next week.

of public policy not lightly to interfere with freedom of contract.

4. A principle which is more distinctly formulated in English than in continental systems of law, but which must make itself felt more or less in every rational system, is that it is not generally expedient to hold a person to a promise which is entirely unilateral, *i.e.* for which, in the language of English law, there is no consideration. If the promisee has neither given nor promised anything in return, nor has been induced by the promisor to put himself to any inconvenience in reliance on the promise, his disappointment is hardly of a kind to give him a claim to the intervention of the State. If in a moment of exuberant generosity I promise to make a present of £100 to a friend, and then on further reflection write to him to say that I have changed my mind, he may be reasonably annoyed by my fickleness; but if the courts were to compel me to pay the whole or any part of that sum in fulfilment of my promise, most impartial persons would feel that he had obtained an undeserved advantage, and that I had been rather hardly treated.

Even when all the above conditions are satisfied, it is in general impossible, or at all events highly inexpedient, for the tribunals to enforce a contract in the literal sense of the term, by actually compelling the promisor to do the precise thing that he undertook to do. All that can be usefully done in the majority of cases is to require him to make good by a cash payment the loss or inconvenience which the promisee appears to have suffered through his default. Thus, if a man has agreed to deliver a sack of potatoes at a stated time and place for a stated price, it will serve no useful purpose to threaten him with stripes or imprisonment in case of his failing to produce them, which may be beyond his power, when full satisfaction may be made to the buyer by a decree in the alternative,—“either deliver the potatoes on receiving

the stipulated price, or pay the difference, if any, between that price and what a similar lot would now fetch," with provision for realising the sum awarded if necessary by distress and sale of the goods of the defaulter.

On the whole, the treatment of contract by a State organised in thorough accordance with the principles here advocated will differ from the present state of English law, so far as it differs at all, rather in the opposite direction from that recommended by Mr. Belfort Bax. A still larger proportion than at present of our daily transactions will be regulated by engagements voluntarily entered into, and enforceable in case of need (in the qualified sense above indicated) by legal process. Enactments regulating the hours and conditions of adult labour will almost invariably contain a "contracting-out clause." With the prompt, easily accessible, and gratuitous civil justice which is an essential feature of our reform programme, there will be little or no danger of this clause being abused under pressure from unscrupulous employers; the poorest and most ignorant wage-earner will know quite well the way to a justice-shop in the next street where he can obtain reliable advice as to the effect of his consent. Model contracts to meet all ordinary requirements will be drafted by the legislative department as accessories to the codified law, and will be obtainable at a cheap price from a local public office without the intervention of a solicitor. Imprudent making of contracts, and actions for breach of contract, will become more and more rare as the result of such actions becomes more easily predictable, and the general outcome will be a much better ordered social life than could possibly result from any attempt on the part of the State to impose on the citizens its own ideas as to the best distribution of work and wages, and as to the management of industry and commerce.

CHAPTER X.

THE PROPER LIMITS OF PROHIBITIVE AND IMPERATIVE LEGISLATION.

Is it properly within the province of a justice-enforcing association to punish vice as such, where there is no element of aggression? In our first chapter we grounded the ethical relation of the modern citizen to the State on "the absolute indispensableness of tribunals backed by adequate force for deciding quarrels and redressing wrongs." Public force is only indispensable when the alternative would be a conflict of private forces. Where there is no quarrel, and no one complains of a wrong, why should the police and the tribunals interfere?

Where the case is really as supposed in the question, the answer must be that there is no good reason for State interference. But direct aggressions of one man against another are not the only things that breed quarrels, nor does a wrong cease to be a wrong when it is diffused among so many sufferers, or when the connection between the act and the consequent suffering is so slow in manifesting itself, that no individual finds it worth his while to make a complaint on his own account.

No one questions the duty of the State to protect society in general against nuisances of a material kind. If a person pollutes a river by discharging refuse into it, or drives a motor-car to the common danger, the police are not required to wait till some individual complains before taking action. In all such cases, supposing the law to be in abeyance, the offender would run consider-

able risk of being mobbed, if not lynched, and it would be difficult to blame the ringleaders of such a mob.

Next in obviousness to such cases are those which consist in the public exhibition of objects, pictures, or printed matter of such a kind as seriously to offend the æsthetic, moral, or religious sensibilities of normally constituted persons in the locality in question.

We take a long step beyond this, and enter a distinctly more debatable region, when we come to deal with acts done in private, with the consent of all parties directly affected, all being sane adults knowing quite well what they are about. Sexual unions, described as illicit because not preceded by any recognised form of marriage, are not now illicit in the sense of being punishable offences, but merely entail upon the persons concerned certain responsibilities in relation to the offspring (if any) of such unions, without the full privileges of regular parentage. But the publicly offering facilities for such acts is as a general rule punishable, and the English law indirectly penalises the parties by refusing to enforce any contracts for which concubinage is the consideration.

So with gambling. It is not, by our law, a punishable offence to make a simple bet ; but the obligation so created is appropriately called a "debt of honour," because the winner has only the loser's sense of honour to trust to for payment, the courts having been forbidden for the last sixty years to render him any assistance ; and direct penalties are provided, not only for offering public facilities for gambling, but also for the mere act of betting, where it is done in so public and systematic a manner as to provoke imitation.

Of all the commoner vices, drunkenness is perhaps the one which has caused the largest amount of ink to be spilt in defence and attack of competing theories of State duty. The danger to society of actual voluntary intoxication, when carried to the point of temporary

loss of reason and self-control, led to its being treated in England, from the time of James I. if not earlier, as a substantive offence, punishable with fine, or in default of payment with six hours in the stocks, irrespective of whether the irregularity occurred in private or in public, and irrespective of actual mischief resulting therefrom; while the drunkard was held responsible for any other offence committed while in that condition to the same extent as if he had been sober; so that he might even be hung for murder, if, when really so drunk as to be quite unable to control himself, he were to kill somebody in a way which, in a sober man, would imply "malice aforethought." In modern practice the rigour of both these rules is considerably relaxed. Direct punishment is only meted out when a person is found drunk and incapable of taking care of himself in a public place, or in a house licensed for the sale of intoxicating liquors, and then the punishment is very light unless the drunkenness has induced disorderly conduct, or was specially dangerous by reason of the drunkard being in a situation involving responsibility, such as having charge of a horse and cart, or of a young child, or of a loaded gun; or unless the drunkenness is habitual, and is also associated with serious or repeated criminality, in which case the Inebriates Act, 1898, will apply, and the offender may be detained for three years in a State-established, or certified and State-inspected, Reformatory; while in grave crimes, such as murder, drunkenness is in practice, though not according to the letter of the law, taken account of as a ground for mitigation of punishment. But, on the other hand, preventive legislation, directed against the remoter causes of drunkenness, has been carried to lengths of which our forefathers never dreamed. A famous and witty "temperance reformer," not long dead, put the views of his party in a nutshell when he laid it down that "the cause of drunkenness is drinking,"—meaning, of course, the

drinking of alcoholic liquors, total abstention from which would manifestly make drunkenness impossible. As the same party also persuaded themselves that drunkenness was the chief cause of crime, disease, and poverty, the conclusion was from their point of view quite natural, that the social gain would far exceed the loss if all consumption of alcohol (except possibly as a medicine) could be once for all absolutely stopped. This drastic recommendation has actually been carried out in some parts of the American Union, notably in the State of Maine. It has not as yet found favour with anything approaching a majority of the English people, but even here there has been a tendency for many years past to multiply restrictions of various kinds on the sale of intoxicating liquors. The general result of this policy has been to give a monopoly value to houses licensed for the sale of such liquors by retail, either on or off the premises (commonly called public-houses), because any one proposing to set up a new house in competition with one already established will generally have to satisfy the justices, not only as to his good character, but also that an additional public house will be a benefit rather than an injury to the neighbourhood. As the opinion gains ground that drunkenness is in the direct ratio of facilities for drinking, the monopoly value of the houses already licensed tends to rise; but this tendency is counteracted by the uncertainty of tenure where, as now in England, the licences have to be renewed annually, and the licensing authority has full power to refuse renewal without any allegation of misconduct on the part of the licensee. But, again, the depreciation due to this element of uncertainty has been mitigated by the principle, established in 1904, of compensating the owners of suppressed houses at the expense of those who retain their licences. Most of those who demand further reform have for their ultimate object either national and municipal manage-

ment of the liquor traffic or total prohibition. For the following reasons it is submitted that neither the one nor the other is desirable :—

The first is open to the very serious objection that it is calculated to confuse the public conscience and to weaken popular respect for the Government. If the liquor trade is an honest and harmless one when properly conducted, why are private individuals, unconvicted of crime and able to give sufficient guarantees for good behaviour, to be forbidden to engage in it ? All monopolies being *prima facie* unjust, what justification is there for this particular one ? If, on the other hand, it is essentially immoral and mischievous, it surely cannot be moralised by becoming a State function, but will be much more likely to demoralise and degrade the State. The utmost claimed for State management is that it may moralise the trade to some extent by so arranging matters that none of its employees shall have any interest in pushing the sale, all profits being applied to some public purpose. But this only shifts the sinister motive from the underlings to the heads of the State, or of the municipality, as the case may be. Their retention of office depends on their popularity, and this cannot but be favourably affected by supplying gratis to their constituents out of the drink profits utilities of some kind—free libraries, baths, public parks, or what not—which they would otherwise have to pay for out of the rates or go without. Of the inhabitants of Gothenburg, the Swedish city where the experiment was first tried, and with which it is chiefly connected in the popular mind, the special correspondent of *The Times*, writing in 1894, said : “ The great majority, including many of the shrewdest men of business, content themselves with the comfortable conviction that a system which relieves the rates by some £20,000 a year is *ipso facto* a good one.” The general view of the British ratepayer will probably not be very different ; but if it does anywhere happen

that the majority are sincerely desirous of seeing the consumption of liquor and resulting revenue diminish *pari passu*, it may reasonably be inferred that this same general sentiment would have operated no less effectively to bring about a diminished consumption under a system of free trade. The nearest approach to the Gothenburg system under British rule is the opium monopoly vested in the Government of India,¹ which has usually been attacked by strict moralists on the ground that it presents that Government to its subjects and others in the aspect of a tempter to vice, and has usually been defended on the ground of financial expediency, very rarely as a check on excessive indulgence.

Of the two, the policy of absolute prohibition is capable of more consistent, if not more convincing, defence. By absolute prohibition is meant putting all or some intoxicating liquors on the footing of drugs, to be used not as thirst-quenchers but as medicine, and to be purchasable for the latter purpose only from a qualified chemist, in bottles labelled "Poison," or with some similar precaution. Very few teetotallers go so far as to deny that there are cases in which alcohol may properly be administered as a medicine; but there is a respectable body of medical and lay opinion in favour of the theory that it is always to some extent injurious to normally constituted healthy people; so that, if "moderation" means taking just so much as is wholesome and no more, there is no such thing as "moderate drinking." Supposing that theory to be established to the satisfaction of the Legislature, and supposing it also to be established that in a very large proportion of cases moderate drinking leads to excessive drinking, and excessive drinking leads to crime, there would be considerable force in the contention that the moderate drinker is a socially dangerous person, and consequently

¹ Now (1910) in process of gradual extinction.

that both he and the vendor of the liquor should be punished as criminals. But we are a long way from the general acceptance of any one of these three points. Even as regards the last, it would probably be true to say that in at least nine cases out of ten the man or woman who has had the misfortune to get drunk is put to bed without difficulty and sleeps off the intoxication without any criminal incident, while the proportion of habitual drunkards among the whole body of non-abstainers would surely be overstated at one in a thousand. If these averages constitute a sufficient public danger to justify the general enforcement of total abstinence, it will carry us very far in some other directions. In the same sense in which it has been said that the cause of drunkenness is drinking, it may also be said with equal truth that the cause of gluttony, with all the consequent inefficiency, bad temper, and disease, is eating. Just as after "drinking" we are meant to supply some such words as "liquors containing an infusion of alcohol," so after "eating" we must, of course, supply "food so rich and appetising as to encourage excess."

Prohibit intoxicating liquors, and you will have no drunkenness; prohibit all but the plainest foods, and you will have no gluttony. But in the one case as in the other you will have cut off a source of physical enjoyment from certain of your countrymen, and will have interfered with their natural liberty, on no better ground than a remote possibility of harm to yourself or to some one else.

The number of gunshot wounds inflicted intentionally or by accident must be vastly greater, relatively to the number of persons possessing firearms, than the proportion of crimes traceable to drink is to the number of non-abstainers; consequently the case for preventing the sale of firearms to persons only requiring them for sporting purposes, would seem to be very much stronger than that for liquor prohibition. The pleasure of

shooting game, and the pleasure of moderate indulgence in wine, beer, or grog, would seem to be much on a level, as luxuries rather than necessities of existence. Some might even say that the former, as involving an element of cruelty, was the more morally dangerous of the two.

The mischiefs to be apprehended from a prohibition policy are those inseparable from all coercive measures directed against a practice by which no individual feels himself directly injured. Informers have to be encouraged. Persons otherwise peaceably disposed find themselves classed with criminals and are tempted to make common cause with real ordinary criminals, and thus the suppression of ordinary crime is made more difficult. Officials are more likely to be bribed by liquor-sellers and liquor-purchasers than by thieves and rowdies, because the former are more likely to have the wherewithal than the latter, and because the evil consequences of connivance do not force themselves so strongly on the average conscience, where no one is visibly the worse for the breach of the law in person or pocket. And lastly, when political parties are divided on the question of strict or lax enforcement, other more important issues are likely to be neglected.

SEXUAL IRREGULARITIES.

More complex considerations present themselves when we proceed to consider the proper limits of State control over the relations between the sexes.

It is not apparent at first sight why the physical union and cohabitation of one man with one woman or with any number of women, or of one woman with one man or with any number of men, should in any case be held to constitute a wrong to other members of the community, unless it happens to involve a breach of contract ; but reasons for interference at once begin to emerge when our

attention is directed to the position of the offspring, the principle having already been conceded that children have an equal claim to State protection with adults, and even more need of it.

In the first place, the mere act of bringing into the world a child afflicted with congenital disease is a wrong to that child, and to the community at large, if the parents were aware, at the time of coming together, of the probable consequences ; and it would seem to be the duty of the State to use all practicable means for bringing home to every citizen what the best medical science has to teach concerning the hereditary transmission of disease, and in particular to direct the attention of couples proposing to marry to this point in some very unmistakable fashion, so as to leave as little room as possible for the excuse of ignorance to be set up in cases where mischief may have actually ensued. But in accordance with our general principle of minimising coercion, no account should be taken of any but known and serious risks. The natural inclinations of lovers should not be thwarted merely because there may be insanity somewhere in one of the families, or merely because there may be in one or other of the parties concerned some incipient consumptive tendency, probably curable, nor yet because some speculative physiologist scents danger in the union of first cousins. When the child is born, healthy or unhealthy, unless we are prepared to sanction the ancient practice of infanticide, we must hold the parents responsible for securing to it a fair chance of a tolerable existence. Poverty cannot be admitted as an excuse for failure to discharge this duty, unless it is the result of circumstances which could not have been foreseen when the child was conceived. I have already indicated in Chapter II. how such cases should be dealt with, but perhaps it may be well to repeat here the caution that the standard of parental responsibility, in respect of maintenance, supervision, and

education, should be fixed low enough to be attainable by the great majority of well-disposed wage-earners in the existing social conditions, and should be only raised gradually if, and when, those conditions improve. If we were prepared, with the Socialists, to treat all children alike as "children of the State," and to provide all alike with free food, free clothing, and free education, on a scale equal to that attained by well-to-do parents for their own children, at the public expense, it would be another matter; but as that is not our line, a mere justice-enforcing association must be very careful not to make lawful marriage too difficult for the masses by imposing conditions, however salutary in themselves, which an appreciable fraction of the population would be unable to satisfy. Much caution and patience will be necessary in order to restore, or perhaps to create, that full sense of parental responsibility which has been alternately impaired by misapplied *laissez faire* and by excessive paternalism. In the days before the Factory Acts, parents were wrongly allowed to deal with their children as property, letting them out for hire to be worked fourteen hours in the twenty-four. Nowadays the child is taken off the parents' hands gratis for at least six hours out of the twenty-four, and they have little inducement to take thought about a scheme of education which they do not pay for and have no power to modify. But there is still enough left of the responsibility for housing, clothing, and feeding, to discriminate roughly between the tolerably fit and the totally unfit to supply that minimum of help and care which may be held to justify bringing the child into the world. Whatever else may be done with those parents who are found to be totally unfit, whether from character or from poverty, they must at all events forfeit absolutely, so long as the unfitness continues, all claim to custody and guardianship; to be restored to them, if at all, only after much stronger proof than would have been required

in the first instance of both moral and economic competence, and only on repayment of all costs incurred up to date ; and the State must take entire charge of the children thus thrown upon its hands, giving them such moral and industrial training as may be best calculated to render them both able and willing to repay the cost of their upbringing in after years.

In the next place, the common responsibility for the offspring has a very important bearing on the question, in what cases, and on what terms, divorce should be permitted. That a child will ordinarily be better off under the care of two parents than of one will hardly be disputed. That it has a just claim to their joint care has already been shown. But what if father and mother are constantly quarrelling ? What if one is, or both are, guilty of adultery ? In either of these cases the child will, generally speaking, have a better chance of being well cared for, and well trained, under the sole charge of that one of the parents who is not to blame, or less to blame than the other, than if they are compelled to be constant witnesses of the daily bickerings of unwilling yoke-fellows. In the second case our English law allows the injured husband to claim divorce with liberty to take another wife, the guilty wife being at the same time allowed to take another husband, whether the paramour with whom she misconducted herself or any one else. In the first case no divorce is permitted, and the liberty to live apart, as against the spouse who insists on his or her right of continued cohabitation, is now practically always allowed on payment of compensation for the loss of the right, and awarded without compensation to the party who can show serious and definite injury, taking the form of either "cruelty," or desertion, or (in the case of the husband) neglect to provide proper maintenance. The condition of separation without liberty to remarry is for many people an irksome and trying one, and there is a good deal to be said for dissolving

the marriage tie altogether in all cases where the law now grants judicial separation. The strongest argument against it is that it would weaken the motives which now give stability to conjugal life. Husband and wife will be more ready to quarrel and less ready to compose their quarrels if the alternative to reconciliation is going to be liberty for each to look out for a new partner. Still more unstable will be the relation, if divorce by mutual consent is to be permitted, without any allegation of wrong on either side. It hardly falls within the scope of this work to attempt to settle these difficult problems; it is sufficient to point out that the claim of young children on those who are responsible for their existence, and failing these on society at large, constitutes the main reason why these problems cannot possibly be ignored by a justice-enforcing association.

And so with regard to concubinage and prostitution. The age of puberty being much below the age of discretion in such matters, and the consequences of early loss of chastity being serious in the extreme, it is impossible, with any regard for justice, to allow the plea of consent where minors are concerned, and the punishment of adults concerned in leading such minors astray is an imperative duty. The correction of the boys or girls who may be the primary offenders may be most conveniently regarded as a measure of domestic discipline, incumbent on the parents or guardians in the first instance, and only in case of their default on the State. We are on more doubtful ground, having regard to the principles generally advocated in this work, when we propose to interfere with an adult woman who deliberately chooses to prostitute herself, and with the men who abet her in so doing. It is not enough to say merely that we regard the proceeding with disgust, as involving a grievous waste and misdirection of the instincts which should subserve the purpose of building up a wholesome

family life, unless we are also prepared to pass sumptuary laws in restraint of what the Government may choose to consider wasteful expenditure. Nor, if we leave the principals unpunished, is it easy to justify criminal process against the keepers of houses of ill fame, as abettors. But express prohibition of certain times, places, and modes of carrying on the traffic implies almost necessarily the legalising of that same traffic at the times, in the places, and in the modes which are not prohibited ; and so we are brought round to that "State regulation of vice" against which so many excellent people have been earnestly contending for the last thirty years. Regulation of some kind there must be, if we renounce the impossible policy of total suppression ; but the danger against which the legislator has constantly to be on his guard is lest the very regulations intended to keep the evil within bounds may actually encourage and intensify it. Thus there are grave objections to any licensing of houses of ill fame, or to any such formal registration of prostitutes as will involve, as a necessary consequence, inability to quit the ranks of shame without formal notification to the authorities. Still worse in their tendency are such regulations as prevail in many continental cities, and were in force in certain military and naval stations in the United Kingdom from 1869 to 1886, for periodical examination of the registered and licensed women in order to warrant them free from disease. Wise legislation will see to the good order of streets and public places ; it will ensure as far as possible that neither parent escapes responsibility for the maintenance of illegitimate children, and that no force or fraud is allowed to enter into the relations between the sexes ; it will make the forms and conditions of regular marriage so simple and just as to leave no excuse for irregular concubinage ; and there it will leave the matter.

CRUELTY TO ANIMALS.

It was a bold extension of hitherto accepted principles when, in 1822, Parliament was induced to legislate against the cruel and improper treatment of beasts of burden and cattle. It was not till 1835 that consideration for the animals themselves was plainly avowed as one of the reasons for State interference; and it was still thought necessary to strengthen the case by reasons more directly connected with the welfare of human beings, the preamble to an Act of that year reciting that "many and great cruelties are practised, by improperly driving and conveying cattle, . . . as well as in slaughtering, and keeping and detaining the same without food and nourishment, to the great and needless increase of the sufferings of dumb animals, and to the demoralisation of the people, *and whereby the lives and properties of His Majesty's subjects are greatly endangered and injured.*"

The wording of this preamble shows that the Legislature had then chiefly in view the brutalities connected with driving, slaughtering, and impounding cattle; but the words "cattle or domestic animal" occur in sec. 2, and sec. 3 reproduces an older prohibition of cock-fights, dog-fights, and bear-baitings. By the Cruelty to Animals Act, 1849, it was made clear that a cat is a domestic animal, and in 1854 it was explained that the term was not necessarily limited to quadrupeds; but it was not till 1900 that the protection of the law was extended to wild animals in captivity.

Some such extension of State functions becomes logically inevitable when once the question is fairly raised; more especially since the Darwinian hypothesis of actual physiological kinship between man and beast has come to be generally accepted. So far as any State is in fact what it is here assumed that it ought to be, an association for defining and enforcing justice, it

depends for its existence on the sentiment of sympathy with undeserved suffering, or on the cognate self-regarding sentiment of common danger—*hodie mihi, cras tibi*—from a neighbour of aggressive tendencies. The normal course of things is for the range of such sentiments to go on expanding with exercise ; as, on the other hand, they are atrophied, narrowed, and ultimately extinguished, if not acted on. The growing habit of prompt response to some cries of distress makes it increasingly difficult to turn a deaf ear to others ; and so we find, in the history of every progressive people, the circle of sympathy and mutual aid ever widening to take in one class of outsiders after another, till the pariah can claim the protection of the law against the Brahman, the negro against the white, the quondam slave against his master, the child against its parent.

When the parent asserts a right to kill or maltreat as he pleases his own offspring, or the master the slave whom he has taken in war or bought from the captor, the primitive State admits the claim, not having got beyond the stage of a mutual defence association among adult male warriors ; but the modern State replies that the helplessness of the sufferer is an additional reason for, not against, its intervention ; that cruelty within the household brutalises not only those who exercise it, but all who look on passively without doing anything to stop it, and that with this temper generally prevailing no effective co-operation for even the more limited ends of justice is to be hoped for. But when this point has been reached, the people who argue thus can hardly fail to resent in some measure the brutal or reckless treatment of those animals whose nervous system most closely resembles the human, and whose sensibility to pain is to all appearance very nearly if not quite as acute. They will be slow to believe that such callousness towards animal suffering can co-exist with due regard for the feelings of weaker human beings,

and their doubts will generally be confirmed by experience. They will feel in themselves the same impulse to interfere on behalf of an over-driven donkey as on behalf of an ill-used woman or child ; and will require as solid a reason for resisting that impulse in the one case as in the other. This is not to deny that such reasons may be more often and more easily found in the case of the donkey than in the case of the woman or child, and more easily in the case of a pig killed for bacon than in the case of the over-driven donkey.

The Acts above referred to purport to deal only with wanton and needless cruelty. In a leading case turning on sec. 18 of the Act of 1849, cruelty was defined as "the act of causing pain for no legal, useful, or justifiable purpose, to the knowledge of the person inflicting it." The right to make the brute creation subservient to the real and serious needs of mankind, at whatever cost to the former, had not so far been questioned. That issue was first definitely raised when, about the year 1870, attention was directed to the practice of vivisectioning dogs, cats, and other animals for scientific purposes.¹ That important discoveries tending to the benefit of mankind, and incidentally to the benefit of animals useful to mankind, had been made by this means in the past, and were likely to be made in the future, which could not have been made without experiment on either human or non-human subjects, was generally though not quite universally admitted. But it was earnestly contended that no amount of gain to the world at large could justify the infliction of prolonged torture on a single inoffensive animal, which could individually receive no sort of compensatory benefit. It was easy for the vivisectioners in rejoinder to point to the much greater mass of suffering inflicted in so-called sport, and to ask why the serious pursuit of useful knowledge should

¹ For the early history of the anti-vivisection movement, see Miss Cobbe's "Autobiography," chap. xx.

be hampered by scruples which were not allowed to interfere with the amusements of the idle rich. But the cold-blooded deliberation of the laboratory did, as a matter of fact, shock public sentiment more than the thoughtlessness of the sportsman, simply intent on victory in a contest of skill ; and, moreover, while it might be possible to credit a limited number of picked scientists with a genuine spirit of philanthropy, reluctantly causing the irreducible minimum of suffering necessary for the attainment of a noble aim, it would not be possible to assume the same high motives in the mass of young medical students, still less with regard to every irresponsible individual who might choose to assert that he was conducting a scientific experiment. Hence the compromise embodied in the Act of 1876, the preamble of which recites that " it is expedient to amend the law relating to cruelty to animals by extending it to the cases of animals which, for medical, physiological, or other scientific purposes are subjected when alive to experiments calculated to inflict pain " ; but which permits such experiments to be performed by a person licensed by the Home Secretary, subject to certain restrictions intended to secure that no more pain shall be caused to the animal operated on than is absolutely necessary in order to attain the object of the experiment ; but that experiments calculated to cause pain shall not be performed merely for the purpose of acquiring manual skill, nor merely for the purpose of illustrating lectures, unless absolutely necessary for due instruction. A certificate from certain high scientific authorities as to the necessity for dispensing with anæsthetics in particular cases, or as to the necessity for experiments in lectures for the due instruction of the students, is required in order to legalise such experiments.

Into the somewhat bitter controversy which has been raging over this Act ever since it was passed, the scheme of this work fortunately does not oblige us to enter. All we

are here concerned to note is, that it is a controversy in which it is not possible for the State to remain neutral, any more that it was possible for it to remain neutral as between master and slave while that institution existed. Just as the legal recognition of slavery necessarily implied a Fugitive Slave Law, under which it was a crime to harbour a runaway slave or to protect him from punishment by his master, whereas its non-recognition no less necessarily implies the provision of legal penalties for every attempt to treat a fellow-man as a slave, so the old common law view, that animals had no rights of which a court of justice could take cognisance, necessarily implied that it was a misdemeanour to interfere for the prevention of any torture, however wantonly cruel, which the owner of a domestic animal, or the captor of a wild animal, might think proper to inflict; and, on the other hand, the repudiation of that view entailed no less inevitably the obligation of defining the exact limits of the rights of animals, and of providing suitable penalties for the violation of those rights. It is a great point gained that the obligation has been plainly acknowledged, even if the mode of its fulfilment still leaves a good deal to be desired in point of clearness and consistency. A broad, intelligible principle, which will cover all necessary reforms in relation to sport, butchery, and pathological experiments, is still a desideratum. The nearest approach to such a principle that I am able to suggest is, that in dealing with animals other than those which we are forced to kill in self-defence, we should not exact any greater sacrifice from them in the shape of enforced labour, suffering, or premature death, than may be taken to be a fair equivalent for the benefits enjoyed by them under our protection; or in other words, that we should consider ourselves as making such a bargain with them as would be approved on their behalf by a competent agent fully able to understand their sensations, and to estimate their chances of a pleasur-

able or painful existence. The test is necessarily vague and imperfect, because no effort of imagination will enable any man to put himself exactly in the place of an animal; but it seems better to work it for all it is worth, than to act and judge without any principle at all. The young man who decides to enlist in the army voluntarily engages to go where he is sent, though it should be to death in some horrible form, if he on the whole prefers the chances of that profession to the chances open to him in civil employment. The question which the recruit has to decide for himself on very imperfect data, the ideal moralist will endeavour to decide with still more inadequate knowledge for the animals subject to his control. Meanwhile the legislator will do well to bear constantly in mind the imperfection of the human instruments through which his enactments have to be applied, and to reserve his prohibitions and penalties for acts which public sentiment very decisively condemns.

SUICIDE.

Lastly, what are we to say of the laws of this and other countries concerning suicide? Only by the most perverted reasoning can this be construed as an infringement of the rights of others; and the technical expression of English common law—*felo de se*—criminal against himself—sounds like a contradiction in terms. Yet it was quite seriously meant, and the legal consequences were formerly assimilated as closely to those of wilful murder of a fellow-man as the nature of things will admit. The corpse was slain over again, so to speak, by a stake being driven through it, and it was buried with ignominy at the meeting of cross-roads, and the “felon’s” personal property was forfeited to the Crown. Blackstone, it is true, rests his defence of the law on two different and decidedly far-fetched reasons (iv. 189)—

“The suicide is guilty of a double offence: one

spiritual, in invading the prerogative of the Almighty; the other temporal, against the King, who hath an interest in the preservation of all his subjects."

From our point of view both of these reasons are irrelevant. The defining and enforcing of rights is a matter between man and man, not between man and the Almighty;—*Deorum injuriæ Dis curæ*. As for the charge of desertion, it has already been shown that the duty of allegiance is correlative to the need of protection, and that refusal of protection is the only appropriate penalty for refusal of allegiance—a penalty manifestly inapplicable to one who can never again suffer human wrong or need human aid.

As regards forfeiture of property, which affects directly only the innocent heirs or legatees, but the prospect of which may possibly operate with some deterrent effect on the intending suicide, the reasons set forth in a later chapter for recognising to some extent, though much less fully than does the English law, the right of bequest and the claims of relatives in case of intestacy, are absolutely unaffected by the question whether the proprietor departed this life voluntarily or involuntarily.

The above-mentioned penalties are happily abolished; but other legal consequences of the theory that suicide is a felony remain, and incidentally serve some useful purposes which will have to be otherwise provided for if the theory is discarded. Thus by putting the attempt to commit suicide on the footing of an attempt to commit a felony, the present law supplies the police and humanely disposed individuals with a justification, which would otherwise be lacking, for forcibly frustrating the attempt, and for detaining the would-be self-slayer in custody long enough to give time for cool reflection, and for inquiries to be made about him—an interference for which he often lives to be grateful. It seldom happens that any actual punishment is inflicted, apart from this provisional

detention. All attempts to commit felonies not specially provided for being indictable misdemeanours at common law, and no special statutory provision having been made for this case, the result is that the magistrates in Petty Sessions have no summary jurisdiction, and must either commit the accused for regular trial or discharge him with a caution; and they usually prefer the latter alternative. Again, the view that suicide is a species of murder involves the consequence that abetment of suicide is also murder; which is contrary to common sense, and to the general maxim of law, *volenti non fit injuria*. But, on the other hand, to apply that maxim indiscriminately would be to afford very dangerous facilities for the carrying out of really murderous intentions under cover of a consent falsely alleged to have been given, or really given on hasty impulse, or under the influence of some treacherous suggestion, or given freely and deliberately but retracted at the last moment;—all matters very difficult to prove or disprove after the death of the most important witness. It seems best on the whole, that the aiding or instigating a voluntary suicide should be treated in general as an offence of considerable gravity, but not on a level with wilful murder; and that the purpose of preventing suicide should be a legal justification for any reasonable use of force, and a sufficient answer to an action for assault or false imprisonment. On the other hand, it would seem to be desirable, if only adequate safeguards against foul play can be devised, that some exception to the general law should be made in favour of medical attendants and friends of a sick man, strongly pressed by the patient himself to shorten the misery of a lingering death from some incurable disease. It is doubtless a difficult problem, but in view of the immense amount of human suffering involved it ought not to be abandoned as insoluble, and it is pre-eminently a problem with which the State alone is competent to deal.

POSITIVE DUTIES.

The above examples *must suffice of the difficulties attending the delimitation of the proper boundaries of the criminal law on its *negative* side. What should be the attitude of the State with reference to omissions to render *positive* services to strangers, or to the community generally, which cannot be brought within the strict *sum cuique* rule of justice, but which appear to be enjoined by the principle of humanity or social solidarity? If our general theory is sound, it should be an attitude of neutrality. But as this involves a departure in some particulars from our present English law, it will be well to examine these cases separately.

Of the duty to render personal help in various ways to the agents of the State no more need be said, than that all such cases are covered in principle by what was laid down in Chapter I. concerning refusal to pay taxes, namely, that the abstract right of refusal should be acknowledged, but should carry with it the forfeiture of all claim to State protection. But it should be added that even subject to this limitation the requisition of unpaid or inadequately paid personal services, such as serving on juries, as parish constable, or as sheriff, is in general unnecessary and undesirable. If the work is agreeable enough to attract volunteers without pay, there is no need for compulsion. If it is not, then there is every need for proper payment. The folly of resorting to a national conscription, instead of attracting by adequate pay the number of soldiers required, and raising the amount by justly apportioned taxes, has been already pointed out (Chapter I.). But the reason for condemning that method is not that the State has not a just claim to the active support of every person who enjoys its protection, but that to exact the same sort of service from a multitude of individuals differing widely in their tastes, habits, and capacities, is to distribute the common

burden in a grossly unfair, and also in a grossly uneconomic, manner. Compulsory personal service belongs logically to the same primitive order of ideas as the levying of tithes and taxes in kind, and the payment of officials by assignment of lands to the produce of which they were expected to help themselves ; methods natural enough in days when money was scarce and credit scarcer, and when the uses of both were imperfectly understood. The variety of sacrifices and satisfactions capable of being measured by money being infinite, any public burden can be apportioned with approximate equity through its instrumentality, and in no other way. The only exceptions are : (1) persons who cannot or will not earn enough in the open labour market to support themselves, and who should therefore, if they desire to be maintained by the State, be required to make a complete surrender of their liberty, and to perform under compulsion whatever tasks are deemed suitable ; (2) duties towards the public arising out of some sudden and unforeseen emergency. Thus a citizen is properly punished for refusing to render assistance to the police when called upon ; though the law is very rarely put in force, and it would argue bad management somewhere if the occasions for its application were at all common. The regular police force ought to be adequate for all ordinary emergencies, and the casual passer-by has presumably business of its own which will suffer if he is detained helping to catch thieves. And the same is true of war ; the *levée en masse* is only defensible as a resource for desperate extremities.

Clearly distinguishable from the duty of assisting the authorities in the prevention of crime is that of active beneficence towards individual strangers, especially in the saving of lives imperilled by natural causes, such as fire, drowning, or starvation. There can, of course, *ex vi termini*, be no such duty incumbent on a member of a justice-enforcing association as such. For those of us

who regard the State in this light the question can only be answered in one way, namely, that in the refusal, however deliberate and cold-blooded, to throw a rope to a drowning man, or to give food to one who is starving, there is nothing of which a properly constituted criminal tribunal can take cognisance. And this is, in fact, the line taken by English law, though it is difficult to reconcile with the large public expenditure on objects of mere beneficence to which every citizen is now compelled to contribute.

A few other debatable cases of positive compulsion will have to be considered in our next chapter.

CHAPTER XI.

TO WHAT EXTENT SHOULD THE PUBLIC HEALTH BE REGARDED AS A MATTER OF STATE CONCERN ?

THE answer to the above question, which is dictated by our fundamental principle, is, of course, that public health is properly a matter of State concern when, and only when, it is threatened by some wrongful act on the part of somebody. With the continual effort of mankind, in this as in other fields, to conquer Nature by understanding and obeying her, our model State will have nothing directly to do. If you speak to me of the great things that can be done by associated effort, and cannot be done without it, for the diagnosis, prevention, and cure of disease, I shall cordially agree ; but I shall at the same time point out that associated action is not necessarily State action. Hospitals have been maintained for centuries without any sort of State aid, and if complaints are now heard as to the inadequacy of the voluntary support accorded to them, that may be partly attributable to the increasing tendency to depend on State aid in such matters. People are naturally disposed to reserve their voluntary efforts for objects wholly distinct from those for which they have to pay taxes ; and when they see the rate-supported infirmary gradually approaching, and in some respects even surpassing, the standard of efficiency attained by those general hospitals which depend on voluntary contributions, and consequently attracting a class of applicants much above the

stage of destitution which would qualify for ordinary poor relief, they may well begin to feel doubtful about the moral obligation of contributing to the latter, and to ask why the State which has gone so far should not go further, and provide for all classes all the hospital treatment that they require, recovering the cost if possible from those who can afford to pay. All that has been said in previous chapters concerning poor relief and education would seem *prima facie* to be applicable to medical treatment. So long as it is simply a question of State provision, poverty and disease can hardly be separated—poverty being one of the commonest causes of disease, and disease one of the commonest causes of poverty. If we were right in holding that the relief of poverty should be left to voluntary action, except where the pauper is willing to place himself unreservedly under State control, and in justifying that conditional offer of relief on the ground that to refuse it might involve having to maintain the pauper in prison as a criminal, we can hardly be wrong in applying the same principle to cases of disease ; which would mean offering State treatment only to those whose maladies were of a nature to involve some danger to the community, and only on condition of liability to detention so long as the public interest might seem to require it. But this leads us to another, and very perplexing, aspect of the subject.

As poverty forces itself upon the notice of a justice-enforcing association when it leads to crime, so does disease (whether due to poverty or not) when it is infectious. It may sound harsh to describe the sufferer from such a disease as a wrong-doer, when it may not be in his power to avoid spreading infection. But, wrong or no wrong, the neighbours cannot be blamed for defending themselves as best they can against him, and there is consequently a call for the justice-enforcing power to intervene. Still more is it imperative for that power to intervene in restraint of disease-begetting habits on the

part of people who have chosen for their own purposes to live in close contiguity with others. Hence we have no need to look outside our own theory for a justification either of the common law respecting nuisances, or of the general policy of our Public Health Acts. But there are cases in which the State does seem to have extended its preventive action beyond the just limits, and to have sacrificed clear and valuable rights of the individual to vague and arbitrary conceptions of public policy. One of these is

COMPULSORY VACCINATION.

In the words of the Minority Report of the Royal Commission of 1894—

“This is the only instance of the universal enforcement by fine and imprisonment of a surgical operation. It goes beyond outward circumstances, and invades the integrity of the healthy body. It requires a wound, however slight, to be inflicted on every healthy infant born, and the contraction of a disease, however slight, of the successful cultivation of which the vaccinating surgeon must satisfy himself.”

The question is, what amount of public danger would justify so extraordinary a proceeding ?

The statements on the faith of which the Act of 1853 passed through Parliament with little or no opposition, were to the effect that a single vaccination in infancy constituted a complete protection against the disease of small-pox for the rest of that person's life, that the operation itself involved no appreciable risk, and that the small-pox was a terrible scourge which there were no other means of effectually combating. Supposing all these statements had been true, would the measure have been justified ? I hardly think so, seeing that, if a single vaccination was a complete protection for life, every adult citizen had his fate in his own hands. He had only to get himself vaccinated, and then it would not matter to him whether his neighbours did so or

not. When all have the means of self-protection, there is no need for legal protection. And although the case of the child is not quite the same as that of the adult ; although we have admitted that the State owes some measure of protection to the child against the caprice or neglect of its parents, we declined in the matter of education, and must again decline in this matter of hygiene, to admit that its interference can properly or safely be carried beyond insistence on a few very simple and obvious requirements. To enforce by fine and imprisonment, solely in the child's interest, one particular precaution against one particular disease, which the parent did not think necessary in his own case, would have been a high-handed and questionable proceeding even had the facts been as was then supposed. But we now know, from a consensus of expert testimony, and on the authority of a Royal Commission, that the real state of the case is very different. The notion of a single vaccination in infancy being a complete protection for life is completely exploded, and the strongest believers in the efficacy of the rite insist on revaccination as essential, though there are wide differences of opinion as to whether the interval should be ten years, or five years, or one year. Nor is it now asserted that any amount of revaccination confers complete immunity in all cases, nor denied that the operation is attended by a quite appreciable risk, especially in the case of infants. A determined minority, respectable both from their numbers and from the scientific attainments of some of their leaders, go much further than this, and deny *in toto* the prophylactic efficacy of the practice. It is not, however, at all necessary to go beyond the admissions of the majority of the late Commission in order to pronounce compulsion absolutely incompatible with our conception of State functions. The Legislature itself, following in part but improving upon the recommendations of that majority, has now whittled down the direct

compulsion almost to vanishing point. That is to say, it merely imposes upon the objector the trouble of making a statutory declaration that he conscientiously believes that vaccination would be prejudicial to the health of his child. Inasmuch as it stands to reason, and is admitted on all hands, that some injury to health, however slight and evanescent, must be caused *ipso facto* by pricking the arm and inserting foreign matter for the very purpose of provoking an eruption, it is clear that every one can conscientiously make this declaration who is not convinced that the injury will be more than counterbalanced by the preventive benefit in a certain possible contingency. Surely those four dissentient Commissioners were right who considered that the retention of this modified form of compulsion would merely keep up the feeling of irritation without any compensating advantage. Yet even the two who went further than this, and objected also to the indirect pressure brought to bear on employees in the public service, still thought it desirable, "in view of the prevalent belief in the value of vaccination," that it should continue to be offered at the public expense for those who might desire to avail themselves of it—a concession which does not accord with our ideas of justice. Why should the minority who do not believe in the utility of the practice be compelled to pay for the gratification of those who do ?

COMPULSORY NOTIFICATION AND ISOLATION.

In the Minority Report of the Vaccination Commission great stress is laid on the alternative policy of combating small-pox by improved sanitation generally, but also, and more particularly, by prompt defensive action on the first appearance of the disease. The majority are at one with the minority in recognising the value of isolation for restricting the spread of the infection, while

differing from them in attaching still greater importance to vaccination. Isolation may, of course, be effected in two ways : either by keeping people away from the patient's home, or by his removal to a hospital exclusively reserved for such cases. The latter course will generally be preferred in the public interest, where a suitable "isolation hospital" exists within a convenient distance. In either case it is evidently essential to the validity of this preventive method, not only that the authorities should be armed with compulsory powers of isolation *in situ*, or of removal as the case may require, but that prompt notification of the danger by those on the spot should be obligatory. And it is no less evident that these precautions, unlike vaccination, are applicable to many other diseases besides small-pox—to all, in fact, that are infectious. Accordingly modern legislation, represented in England by the Public Health Act, 1875, sec. 124, and the Public Health (London) Act, 1891, sec. 55, and by the Infectious Diseases Notification Acts, 1889-1899, has provided for both compulsory removal and compulsory notification, as also for the compulsory cleansing and disinfecting of the tenement in question. Can this be justified on our principles, or is it, as some zealous Individualists have contended, an unwarrantable invasion of personal liberty ? It seems to me that every case of infectious disease gives rise to a conflict of rights which imperatively calls for the intervention of a justice-enforcing authority, and that, in this as in some other cases, justice cannot be administered satisfactorily unless some provision is made for the custody and treatment of persons who, and of things which, would otherwise be a danger to the community. Just as the provision of a village pound—said to be the most ancient institution in England—was essential to the working of the primitive law of distraint ; as starving men cannot, with any regard for humanity, be prevented from stealing unless the alternative is offered them of

maintenance at the public expense and under public control ; and as the claims of children on their parents cannot be effectively enforced unless the State is prepared to stand *in loco parentis* where the natural parents fail : so the right of the sufferer by small-pox or scarlet fever to do the best for himself, and the conflicting right of the neighbours to be protected against infection, seem hardly capable of equitable adjustment without a State-provided place of refuge and seclusion. Such a provision is not an extension of State action beyond the sphere appropriate to a justice association, but a natural accessory to that function, as much as a prison or a lost property office. The same considerations which justify State provision of an isolation hospital will also justify compulsory removal thereto ; unless the case is such that isolation of the sufferer in his own house can be made reasonably effective, and is preferred by him or by those in charge of him.

Then, again, if compulsory removal is held to be the proper course in certain specified contingencies, the object of such a regulation will scarcely be attained unless some steps are taken to secure prompt notification of the occurrence of these contingencies ; and the course actually adopted by the Legislature, of imposing this duty in the first instance on the head of the family to which the patient belongs, in his default on the nearest relatives present in the building, or in attendance on the patient, and in their default on the occupier of the building, and on the medical attendant, if any, seems not unreasonable. It is analogous to the obligation of every citizen to give evidence as to what he knows concerning an alleged offence.

Against this it has been urged that under such a system “ the hospital becomes a prison in which persons are confined without having been tried by any legal tribunal, without having committed any legal offence, on the *lettre de cachet* of a medical man.” If it were so, there

would no doubt be serious ground for complaint. But the Public Health Act, 1875, requires not only the certificate of a qualified medical practitioner, but also the order of a magistrate in the case of a person without proper lodging or accommodation, or lodged in a room occupied by more than one family, and the order of a local authority in the case of a person lodged in a common lodging-house. It may be that the order of a magistrate ought to be required in all cases, but the law as it stands is surely very far from deserving the opprobrious comparison with *lettres de cachet*. It is true that the mere fact of catching an infectious disease is neither a legal nor a moral offence ; but the refusal of the sufferer himself, or of those in charge of him, to co-operate in any measures for preventing the communication of the disease to others, which can be taken without impairing his own chances of recovery, is to my thinking a moral, and might without injustice be made a legal, offence, were it necessary to do so in order to lay a foundation for the exercise of compulsory powers. But is any such foundation necessary ? We incarcerate lunatics whenever it is made to appear that, though without any fault of their own, they are a danger to the community ; and we destroy private property without scruple, though not without compensation, in order to stop the progress of a fire ; nor do such measures in any way conflict with the theory of State function here advocated.

When, however, it is further urged that, as things now are, removal to an isolation hospital may expose the patient to really oppressive treatment, and that but for this danger no compulsion would be necessary, we are on different ground. The question becomes one of fact rather than of principle, and we have to inquire whether the power of removal and detention is being, or is likely to be, abused, and if so how the regulations now in force should be amended in order to guard against such abuse.

It is alleged, for instance, that the patient's own

chances of recovery are seriously impaired by the very process of removal, by the nervous shock caused by separation from his friends, and by being confined in the same building with other infectious patients ; that a new terror is added to hospital detention by the fact of some medical men being known to regard hospitals as primary schools for clinical instruction and experiment, and only secondarily for the benefit of the individual patient ; and that, so far from the safety of the community being promoted by the concentration of a number of zymotic patients in a single establishment, it has been found to be a most effective method of disseminating infection.

Clearly, if this last contention can be made good, there will be an end of the whole question until some new scheme of management can be devised which is not open to this fatal objection ; and, almost equally of course, so long as the consequences to the patient are believed to be anything like as serious as the critics represent them to be, the obligation to notify will be resented by relatives with an intensity proportionate to their affection for the sufferer ; and the sympathetic practitioner will be constantly tempted to make the most of every possible doubt, and to evade the obligation of certifying the existence of infection. In that case the disease will have a better chance of spreading than if reliance had been placed throughout on voluntary co-operation alone.

This treatise is concerned only with principles, and with facts so far as they illustrate principles. I suggest the following as the principles which ought to be kept in view when it is a question of combating infectious diseases by the method of compulsory isolation and notification :—

1. No diseases should be scheduled for this purpose unless they are indisputably and dangerously infectious. Isolation is in itself so anti-social an arrangement, and compulsion is so rough and dangerous an instrument, that the combination of the two should be reserved as an

exceptional remedy for the most serious emergencies. Unless affections are to be starved, and useful work of all kinds obstructed, some amount of risk must be accepted by everybody as the price of living in society.

2. No compulsory removal should be attempted, unless there is, in the words of the Public Health Act, 1875, "a *suitable* hospital or place provided within the district, or within a convenient distance of the district"; and no hospital should be considered suitable for this purpose unless the risk of patients infecting each other is effectually obviated, and unless the patient is effectually safeguarded against being treated as a *corpus vile* for experiments, and guaranteed at least as much comfort and attention as he might have enjoyed in his own home.¹ Unless these conditions can be satisfied, there will be less injustice in allowing him to remain with his friends, even though he may be to some extent a danger to his neighbours, than in forcibly removing him.

3. The whole cost of removal, maintenance, and treatment in the isolation hospital should certainly be defrayed in the first instance by the State, because the sole object of the proceeding is the protection of the public against an imminent danger, and that will be defeated if any question of money is allowed to stand in the way of prompt action. But how the cost should be apportioned in the case of a person who is not a pauper is a more difficult question. It is true that it is a case of violating the freedom of an individual, not in his own interest, but in that of the community, and if that were the whole truth there could be no question as to the undivided liability of the community. But we have

¹ It has been contended that relatives or friends, unwilling to be separated from the patient, and willing to submit to the necessary restraints, should be provided as of right with accommodation in the isolation hospital; but this would be a very large, and perhaps almost prohibitive, extension of the term "suitable."

further to ask how the community came to be endangered, and the answer will be that the source of danger is the condition of this person's body. Granting that this condition is not (demonstrably) his fault, neither is it, so far as appears, the fault of the community; and however it came about, it imposes on him the duty of doing what he can, consistently with self-preservation, to avoid being a nuisance to others, and confers upon others the right (as already observed) of defending themselves against the nuisance with the least possible injury to him. For these reasons it would perhaps not be unjust to record a claim against him for half the cost properly incurred, and to enforce the claim whenever it appears that this can be done without trenching on his means of subsistence. But considering that the most frequent occasions for compulsory removal will be in the case of persons not far above the poverty line, and thrown out of employment by the fact of sickness; considering also the importance of encouraging voluntary notification of disease, it will generally be sound policy to waive the right (if right it be) to partial repayment.¹

OBJECTIONS TO UNIVERSAL STATE DOCTORING.

While the suppression of nuisances, and the enforcement of proper sanitary regulations, are well within the competence of a justice association, and while such preventive measures as we have just been discussing are capable of justification when certain rather difficult conditions are satisfied, we cannot say the same of the proposals now being pressed in certain quarters² for administering appropriate medical relief at the public

¹ This seems to be, in fact, the conclusion now generally arrived at by local authorities. See "The State and the Doctor," p. 189.

² See especially the Minority Report of the Poor Law Commission, 1909, p. 889, etc.; and "The State and the Doctor" by Mr. and Mrs. Sidney Webb.

expense to all sick people who apply for it, whether the complaint is infectious or not, and even pressing it upon those who do not apply when it appears to the Local Health Authority that it is required, and leaving it to another authority to decide afterwards whether the party so relieved (it may be against his will) can and should be made to pay the costs incurred. The recovery of these sums would be found in practice so troublesome that it would be almost certainly neglected. But even if it were possible to discriminate, and to limit the ultimate liability of the taxpayer to the cost of medical treatment supplied in excess of the means of the recipient, it would still be a grossly unjust imposition. No reason is given or can be given why those who lead healthy lives as the result of their own good parentage, good bringing up, energy, prudence, or thrift, should be compelled to restrict their expenditure or work harder, with the probable consequence of either impairing their own health or being debarred from bringing up a family, in order that others born of less healthy parents, or less carefully brought up, or less careful of themselves, may be dragged up as near as possible to the same level of bodily fitness. It is, however, unnecessary to labour this point, because we have already recognised that the treatment of disease and the treatment of poverty are inseparable. Good food, good clothing, and good housing are as necessary to prevention and cure as medicine and surgery. The reasons why the State should not undertake the general relief of poverty have been already set forth.

Supposing these views to be correct, it follows unfortunately that British legislation has travelled of late years a considerable distance in the wrong direction. Thus—

The Public Health Act, 1875 (framed generally on sound lines), and the corresponding Act of 1891 for the County of London, permit municipal authorities to

provide hospitals out of the rates for the sick generally ; not only isolation hospitals, and not only for paupers. This power has been largely exercised, with the result, as shown before the Poor Law Commission, of much overlapping and confusion, and much waste of national resources, which would have been avoided had the line between State compulsion and voluntary co-operation been drawn where we propose to draw it. It is becoming increasingly difficult now to stop short of the fourth point in Mr. and Mrs. Sidney Webb's new "Charter of the Poor,"—"to empower and require the Local Health Authority to search out all sick persons within its district who are destitute of medical attendance, and to apply appropriate treatment either in their houses or in suitable institutions." The principle underlying that proposal, as also the other seven points of the "Charter," is—"everybody to look after everybody else, and nobody to look after himself"; and it is, or should be, a great advantage to the advocates of the justice-enforcing theory of the State to have the outcome of the chief alternative theory set forth with such refreshing candour and directness. To those who have once been brought to understand the nature of political power, and the conditions of any tolerable success in placing and keeping it in trustworthy hands, the fact that a given proposal involves setting up, by the side of the dangerously hypertrophied educational hierarchy already established, an equally gigantic Public Medical Service, will constitute a *reductio ad absurdum*. The limits within which, were it possible to start afresh, we should like to confine our public educational service, have been indicated in Chapters IV. and V. The corresponding limits of a public medical service would be fixed on the same general principles of—

(1) Restraining only such practices as constitute an actual private wrong or public nuisance, and

(2) Making public provision for those only who

voluntarily place themselves, or have to be brought for reasons of public safety, under complete State tutelage.

But the application of these principles to matters of hygiene has its own special features.

As to the first, it is much easier to recognise, and less dangerous to attack coercively, public nuisances affecting bodily health than those affecting the mind. We may suppress a school which is shown to be a direct nursery of crime, and educational methods which have an obviously demoralising tendency; but to go beyond this would be to strike dangerously at that freedom of opinion which is so indispensable to social progress, whereas the insanitary habits which tend to the propagation of disease are to a large extent not matters of debate. For the treatment of infectious diseases by compulsory notification and isolation, the analogy is not to be sought in the educational sphere at all, but in that of police and justice. Our prisons and reformatories are our isolation hospitals for moral distempers; the difference being that the treatment is in the one case simply preventive and curative, in the other case preventive, possibly curative, but also penal.

Then as regards public provision of medical assistance for those who have not surrendered or forfeited their liberty by reason of being paupers, criminals, lunatics, feeble-minded, or inebriates—the case of patients compulsorily removed for the safety of the public has been already discussed, but it is almost as difficult to isolate mentally that case from other demands for State provision as to isolate the small-pox itself.

What of the person who is suddenly taken ill, or injured by an accident, in the public street? The police must take prompt action of some kind, if only to clear the thoroughfare, and any action not for the benefit of the sufferer is likely to be resented by the public. What is to be done with him if he has no home of his own within reach? There may, or there may not, be a

voluntary hospital willing and able to take him in, with or without payment. In view of this uncertainty, the case seems strong for empowering local authorities to provide a place for temporary reception and treatment of such sufferers as those above mentioned. But if our general doctrine is correct, a firm stand ought to be made at this point, and the utmost care taken not to let this State provision gradually develop from a mere accessory to police work into a systematic offer of gratuitous medical treatment, of the most complete kind that the most up-to-date science can suggest, to all and sundry who may choose to avail themselves thereof ; involving as a necessary consequence the gradual absorption of the whole, or nearly the whole, of the medical profession into the ranks of a thoroughly officialised "Public Medical Service." Precisely what safeguards would be most effective in checking this tendency, I am not prepared to say ; but something would be gained by the mere adoption of some such title as "Emergency Hospital." It might be well that those brought to it by the police should have the alternatives presented to them at an early stage in their treatment of (1) declaring themselves paupers and being removed as such to the State infirmary provided for that class, or (2) remaining in the Emergency Hospital as paying patients at a moderate and inclusive charge. This is, of course, supposing that there is still no accommodation available in any voluntary hospital on conditions that the patient is prepared to accept.

Those who insist on the impracticability of any such rigid limitation of State expenditure in the public health department are wont to point to the present inadequacy of all unofficial agencies put together, whether commercial, philanthropic, or co-operative, whether free hospitals, paying hospitals, nursing homes, sick clubs, provident medical societies, or private practitioners, to meet the needs of the community. In so doing they commit

the very common mistake of estimating what might be accomplished if other things were as they should be, by what they see actually accomplished while other things are very much as they should not be. In this as in the other departments already surveyed, we see the State constantly neglecting or fumbling over the tasks that properly belong to it, while intruding into the spheres appropriate to unofficial agencies, and then using the resulting muddle as an argument for extending yet further the range of its interference. If the laws of property were more wisely framed for the encouragement of skill, industry, and thrift; if dishonest ways of acquiring wealth were more effectually checked; if, in short, the administration of justice more nearly approached perfection, and if at the same time the burden of taxation were lightened to the masses, there would be less poverty, and more intelligence and right living, and therefore less disease.

Then, again, if Government were to deal with destitution on the lines suggested in my note to Chapter II., the State infirmary would have its own clearly marked place among medical institutions. The one condition of admission being submission to full and permanent State control, terminable only on the authorities being satisfied that, whether owing to improved health, better industrial training, or any other cause, the self-constituted pauper was fit to be restored to society as a fully self-supporting and deservedly free citizen, or that some friend or charitable society was prepared to take charge of him, there could be no competition between this institution and the voluntary hospital or any other unofficial medical agency. Provident medical societies would be better supported by all persons of narrow means who set a high value on their independence, and would consequently be able to offer better terms to the general practitioner. Voluntary hospitals would be better supported by the benevolent public, and would

be able to put their finances on a sounder footing, if the precise nature of the needs which it depended on them to supply were more clearly defined. It would be understood that they existed primarily to supply to all classes, on terms varying with the position in life of the patient, the sort of medical and surgical aid which only a great and well-staffed institution can be expected to supply. The contributors, on whose wishes the policy of a voluntary institution must ultimately depend, would probably be more ready than now to support any reasonable regulations making entirely gratuitous treatment the exception rather than the rule; but there would be no necessity whatever for all hospitals to pursue the same policy.

SCHOOL CLINICS.

Lastly, as regards the present practice of official medical inspection and medical treatment of school children, that must stand or fall with the whole principle of State education. If ever the opinions expressed in Chapters III. and IV. of this book should come to prevail (of which there is unfortunately little prospect at present), this will naturally disappear with the rest of the system; but as long as it is the will of our legislators that instruction shall be compulsory and gratuitous, I fail to see how one can consistently object to either free meals or free physic, surgery, and dentistry, for the young recipients of instruction.

When I say that medical inspection and treatment of children in State schools must disappear with the disappearance of the schools themselves, I am far from meaning that children would or should be left defenceless in the matter of health against parental neglect. I have insisted in Chapter II. on the duty of the State to see that no parent or other person having charge of a child falls short of a certain low and generally attainable

standard of good management, and in case of habitual failure to come up to this standard, whether from want of will or want of means, to take the child into its own custody and deal with it as a present public charge and possible future public asset. I did not specify any particular mode of ascertaining the general fitness or unfitness of the parents ; but I could offer no objection on principle to an occasional muster of all children of a certain age within a given area for medical inspection, or even to occasional domiciliary visits of a health inspector.

Whatever the mode adopted, so long as the consequences of gross and habitual neglect were clearly understood, parents who did not wish to be branded as incompetent and deprived of their children would take care to seek medical advice, and if necessary to pay for it, and to act upon it to the best of their ability. As in the matter of schools, so in this matter of hygiene, we may be sure that either some tolerable provision would be brought within the reach of the great majority of parents by commercial, philanthropic, or co-operative agencies ; or, if not, that the cause of failure must be such a general lack of public spirit and intelligence in the community as would bring to utter grief any such scheme of universal State provision as that proposed in the new " Charter of the Poor."

CHAPTER XII.

IS IT THE DUTY OF THE STATE TO EMPLOY TAXATION AS AN INSTRUMENT FOR RE- DRESSING INEQUALITIES OF WEALTH ?

To answer the above question in the affirmative would be to abandon our definition of the State as a justice-enforcing association. Part of its duty as such is to determine the different ways in which property can be justly acquired, and having done this it would be stultifying itself by taking away from any individual what is his according to the stated conditions, except as a penalty for some misfeasance, or as his proportionate contribution to the expenses of the association. That inequalities of wealth must result from the impartial administration of any just code of property law, follows from the natural inequality of mankind in respect of (1) capacity for producing, and (2) desire of accumulating wealth. The only original title to property which a normally developed sense of justice will admit is productive effort ; labour of hand or brain which has resulted in the creation of some new utility. If each man worked in isolation, wrestling unaided with the forces of nature for the supply of his personal needs, justice would, of course, prescribe that he should be left in undisturbed possession of the fruits of his exertions. But such a situation must always be so exceptional, in the most primitive no less than in the most advanced state of society, as to be hardly worth considering except as a convenient standing-point for inquiries as to the

proper distribution of the products of *co-operative* industry. In practice an individual is seldom or never in a position to say simply, "This thing is mine because I produced it." Even if it is a box that a carpenter has made with his own hands, he has to explain how he came by the material and the tools, and is thus thrown back on some derivative title such as gift or exchange ; and if it happens to be an ocean-going liner or a West End mansion, the list of persons who have contributed, by capital or brainwork or handwork, to its "creation" would be impossible to ascertain, and if ascertained would fill a considerable library. The only thing that any individual ever "creates" is, not a single material object but a *utility*. Owing to his action, some material object has become more useful, more conducive to the satisfaction of some human desire, than it was before ; and what he is in justice entitled to is a commensurate contribution towards the satisfaction of his own desires, whatever they may happen to be. The normal method of securing this equivalent, in an orderly community of the modern type, is direct bargain between employer and employed, or between buyer and seller, as the case may be. The carpenter sells the box ready-made, or makes it to order, for the best price he can obtain, having previously calculated, before he set to work, the chances of that price being sufficient to make the effort worth his while. The buyer in like manner compares the satisfaction that he expects to derive from the possession of the box with any other gratification that the same sum of money would enable him to obtain. The utility of any given output of labour and skill resolves itself ultimately into a question as to the mental state of all possible purchasers of the product.

Supposing all wrongful acquisition to be eliminated, each person's earnings will be proportionate to his success in satisfying the desires of those of his fellow-men who are

able to give him something in return ; and seeing that no two men are alike in respect of either the will or the power to do this, there will be, and surely ought to be, corresponding inequalities of earned wealth. What, then, of unearned wealth ? Supposing as before that all wrongful acquisition has been effectually prevented, this can only result from gift, bequest, or inheritance.¹ Now the injustice of abolishing, or in any way curtailing, the right of every living owner to give away in his lifetime what the law declares to be his, will be generally admitted. The reasons for respecting the right of bequest are considerably less cogent. To speak of a dead man owning property is to indulge in fiction. And when this fiction is gravely kept up, as it still is in England and elsewhere, to the extent of religiously applying the income of an endowment according to the directions given by the founder some centuries ago, the superstition ceases to be merely picturesque and harmless, and is a source of very serious injury to the living, while towards the dead it is an insult in the guise of a compliment. If the disembodied spirit is supposed to be still existent, and still interested in mundane affairs, it is an insult to his intelligence to imagine him learning nothing fresh as the years and centuries roll on, and stolidly content with the position of a helpless spectator while the machine that he set going in the days of his earthly immaturity goes on blindly grinding out all sorts of unintended mischiefs. If, on the other hand, the deceased

¹ I do not include such titles as "occupancy" or "finding" among titles to unearned property, because I consider that in a properly framed Code they will not be admitted at all except to the extent that they may justly be regarded as modes of earning wealth. All ownerless things should be claimable by the State, subject to the proper remuneration of the individual who adds utility to them by discovery, transport, or culture ; and it is only where this proper remuneration leaves no surplus worth claiming that the entire material object in question should be left in the absolute ownership of the finder or occupant.

founder is supposed to be non-existent or uninterested, the plea of respect for his wishes falls to the ground altogether. There is one sense, and one only, in which we can be sure that we know what we are talking about when we speak of the spirit of the dead man surviving. It is when we mean by it that his influence is traceable in the character of those who had intercourse with him while he lived, or who know him through his writings or his reputation. In that sense the spirit of the founder may be left to take care of itself. Those who are to any extent imbued with his ideas will to that extent be disposed to spend their money on objects similar to those which he had at heart, while their methods, suggested by present circumstances, will generally differ materially from those embodied in his testamentary directions, if any. But whether it is so or not is immaterial so far as the question of justice is concerned. The right to enjoy what one has earned is surely a right belonging to the living, not to the dead. And if a proprietor's notion of enjoyment includes, as it should, the feeling of being able to do something that will benefit posterity, the only honest way of obtaining this enjoyment is to start the work, whatever it may be, at the sacrifice of some other enjoyment, in his lifetime, and to strive to impress his ideas on those who are likely to survive him.

Unconditional bequest to a specified individual or to a corporate body is more logically defensible, but only as a compromise between conflicting principles, and therefore only to a limited extent. The recognition of uncontrolled power of disposition up to the moment of death is hardly compatible with absolute disregard of the expressed wishes of that same person as soon as the breath is out of his body, and would involve very awkward consequences in practice. It would compel every property owner who desired to benefit his friends or relations in preference to the State to give away all he

could possibly spare as he felt death approaching ; it would invite an unseemly scramble round the bedside of the dying man ; and it would give quite a new significance to the prayer in the Church Litany against sudden death. The only way to preserve unimpaired the effective ownership of the living is for the State to guarantee the execution of their testamentary dispositions with respect to as large a portion of their belongings as will make it worth their while to abstain from trying to defeat the Treasury by stripping themselves of everything in expectation of death. But the only dispositions so recognised should be unconditional bequests to living individuals (with appointment of trustees for minors), or to actually existing institutions. How large the bequeathable maximum or percentage should be in any given country is a question of national psychology rather than of ethics ; but it may be said generally that there is no social harm, but rather the reverse, in making it the interest of the proprietor to transfer in his lifetime all the surplus above what is needed in order to maintain his own working efficiency while he is able to work, and to secure him a comfortable old age. Such donations *inter vivos* ought not to be regarded as evasions of the death duties, but as a choice of one of two alternatives which the State has deliberately left open. What I am just now more concerned to insist on is that, whether large or small, the portion reserved for the public Treasury, over and above the cost of distributing the estate, is wrongly described as a form of taxation. It is simply securing for public use what has become *res nullius*, the only person who ever had a title to it having ceased to exist. It is not of such resources that we are speaking when we insist that taxation should never be used as an instrument for redressing inequalities of wealth. We have already pointed out (Chapter II.) that the net income from all public property should be first applied so far as it will go towards defraying the

necessary expenses of government, and that only after this primary fund is exhausted should taxation, properly so called, be resorted to.

If indeed it could be made out that in any country the legitimate non-tax revenue would be more than sufficient to meet the necessary expenses of government, a serious question would arise as to what should be done with the surplus; but even then it hardly seems just to employ it in redressing inequalities of wealth. We are bound to assume that by the regular operation of a reformed legal system all that can be done has been done to redress all inequalities that can be definitely traced to previous injustice, and to prevent all unjust distribution in the future; and that being so, equality would seem to be equity in the division of the common fund if it is to be divided *in specie*; or if it is not to be so divided, but devoted to some object of public utility, that object should be one by which the rich will benefit as much as the poor. But the whole question is purely academic, under any conditions at all resembling those at present prevailing in any of the leading nations. Let us see, for instance, how the account would stand for the United Kingdom at the present time.

The estimated national expenditure for 1910-11 was nearly 172 millions. The expenditure of all local authorities of the United Kingdom, met from sources other than loans and Government contributions, was 111½ millions in the latest years for which figures were obtainable at the date of writing, viz., 1905-6 for England and Wales, and 1906-7 for Scotland and Ireland. We shall probably be safe in putting it for the present time at not less than 113 millions, thus making up a total annual expenditure of (at least) 285 millions.

Now let us deduct from this the items of expenditure which on our principles ought to be struck off, as lying outside the proper province of the State.

1. The greater part of the present national and municipal expenditure on Education, Science, and Art ; say $\frac{1}{10}$ of 30 millions, or	27	millions.
2. Old age pensions	12 $\frac{1}{2}$	„
3. At least half the present expenditure on poor relief, assuming the system of dealing with paupers, outlined in Chapter II., to be adopted ; say	10	„
4. Other miscellaneous items of expenditure, not defensible on our principles, certainly not less than	$\frac{1}{2}$	„
Making up a total of at least	50	millions,
and thus reducing the annual expenditure to 235 millions.		

But there is something to be set against this reduction. While our principles require us to cut off altogether certain large departments of State activity, they require us no less to insist on the highest possible standard of efficiency in the discharge of those primary protective and judicial functions for which no voluntary, non-coercive agencies can possibly be substituted.

So far as military and naval armaments and diplomatic establishments are concerned, I possess no knowledge enabling me to affirm that we are spending at the present time either too much or too little. As has been often and truly remarked, armaments depend upon policy. The principles of foreign policy laid down in Chapter II. do not conflict in any marked degree with the course actually pursued by the British Government during the last four or five years, and the official estimates must therefore be provisionally accepted as correct. And the same may be said of the provision against internal and individual disturbers of the peace. It might be otherwise if we were discussing India, but as regards the United Kingdom I see no particular reason for imputing either excess or defect to the estimates under the head of police.

It is when we come to the heading " Law and Justice "

that our theory compels us to demand more than it has hitherto been usual to provide. As I understand the matter, justice can never be said to be fairly administered between man and man so long as there is any question of money payment, other than restitution to the aggrieved party, or payment of fines properly imposed for breaches of the law. I also hold that in criminal cases, wherever professional assistance is paid for by the public on the side of the prosecution, it should also be paid for, and on the same scale, on the side of the defence (greatly extending the Act of 1903). And I would further urge that no expense should be spared for making the whole body of the laws which the citizen is expected to obey as perfect as possible in expression as well as in substance; which implies a strong legislative department, with a Minister of Cabinet rank at its head, continually engaged in overtaking the ever-growing mass of judicial decisions, reducing them to statutory form, and submitting them in that form to Parliament for confirmation or amendment. Some twelve years ago, endeavouring to form an estimate of what reform on these lines would cost, I put the minimum at an additional two millions a year.¹ This did not include any provision for legal assistance to civil litigants, except where difficult points of law had to be argued, and in other respects represented rather what there seemed to be

¹ In the second of two articles which appeared in the *New Century Review*, April and May, 1897, under the title, "Wanted, a legal Lord Charles Beresford." The account was made out as follows:—

Legal assistance, and occasional compensation, to accused persons	£300,000
Abolition of Court Fees	1,200,000
Extension of County Courts and Police Courts	130,000
Cost of arguing points of law	360,000
Legislative department, in excess of the present cost of the Parliamentary Counsel's Office and of the Statute Law Revision Committee	10,000
	<hr/>
	£2,000,000

some chance of obtaining than the counsels of perfection dictated by our theory. From this latter point of view, I think it quite likely that an extra five millions might be money well spent, of which, however, we might expect to get back at least one million in diminished expenditure on criminal business, police, and prisons. Besides these law reforms, we require for the efficiency of Parliament, on which the working of the whole State machinery depends, some such measures as are now promised for payment of members and of all necessary election expenses. These two charges together, if the latter is liberally interpreted, and made to include everything incidental to registration, may perhaps account for another million, thus bringing up the total annual expenditure to 240 millions. Towards meeting this demand the following non-tax resources might on our principles be available.

1. *Death Duties* (reckoned as "non-tax" for the reasons already explained). The enhancements effected by the Budget of 1909 are quite in accordance with what has been here advocated, and, judging from the first two years of their working, we may perhaps venture to forecast an average yield of 22 millions.

2. *Post Office*. Our system requires the abolition of the present State monopoly; but as it is conceivable that the Postmaster-General, carrying on postal, telegraphic, and telephone business in fair competition with other agencies, might still be able to show the same profit as now, let us for the sake of argument put this head of non-tax revenue at its present figure of about four millions.

3. *National and Municipal Trading*. We have allowed (Chapter III.) that this may under some conditions be legitimate, so let us be very liberal and put down ten millions for possible profits to be earned under those conditions.

4. *Miscellaneous*. We will assume the undiminished

productiveness of certain other existing sources of non-tax revenue, such as profits from lands already vested in the Crown, dividends on Suez Canal shares, etc., now estimated (in round numbers) at two millions per annum.

There remain two very important but highly conjectural sources of new revenue.

5. *New Land Revenue.* What I should regard as the most ideally just measure of land nationalisation would consist in converting existing site values (*i.e.* values not attributable to any action on the part of the owner or of his predecessors in title) into rent-free leaseholds under the State for fifty years or thereabouts; the rents to be raised after the expiration of that term up to any figure for which an offer can be obtained, but subject to the claim of the old tenant to the full value of buildings and other improvements. This would mean no direct and immediate gain to the State, but a prospective profit, greater or less according to the pressure of population and other causes affecting land values, on the security of which money for immediate use might no doubt be borrowed if necessary. To estimate the present annual value represented by such prospective profits is a task quite beyond the capacity of the present writer; but for the sake of showing how much must be postulated before any question can arise of dispensing with taxation and disposing of a surplus non-tax revenue, let us take the figures supplied by Mr. Charles Wicksteed in his ingenious and instructive pamphlet, "The Land for the People" (1894), on the supposition that the land was to be taken over at once, compensation being given to the landowners in the shape of Government bonds to the amount of thirty times the ground-rent, redeemable at par at any time at the option of the Government, and in the meantime bearing a fixed interest of $3\frac{1}{2}$ per cent. per annum. Mr. Wicksteed worked out the result on the assumption of an average rise in the value of land to

the extent of 1 per cent. per annum, and found that on that basis the process of relieving taxation would commence in the third year with a modest sum of £33,333, and would have risen by the thirty-first year to 16 millions; the value of the ground-rents of the United Kingdom being taken "by way of illustration" at 100 millions, which he himself thought to be probably far below the mark, but which Mr. Chiozza Money arrived at independently, writing eleven years later, and basing his estimate on the income-tax assessment of 1902-3.¹ Let us for the sake of argument project ourselves thirty years into the future as regards this one item, assuming the other receipts and outgoings to remain as at present.

6. *Revenue to accrue from Church Disestablishment.* It was shown in Chapter VI. that our theory required the separation of Church and State, already effected for Ireland, to be extended to England and Scotland; and the Irish precedent may afford some, though very uncertain, guidance as to the probable financial results of such an operation, if conducted with due regard to vested interests. In that case the entire Church property was valued at 16 millions, out of which only 7 millions, representing at 3 per cent. an annual value of £210,000, fell ultimately to the State. It is estimated that the income of the Church of England, derived from tithes and other ancient endowments, is about 5½ millions, and that the corresponding income of the Established Church of Scotland is about half a million. As it was thought by many that vested interests received rather too much consideration in the Irish case, let us admit the possibility of two-thirds, instead of less

¹ "Riches and Poverty," p. 161. Mr. Mallock, "The Nation as a Business Firm," puts the land rents in 1905 at 92 millions, and finds the average rate of increase to be, not 1 per cent. per annum, but 2 per cent. in twenty years, therefore less than $\frac{1}{10}$ per cent. per annum.

than half, of this income being secured for the State. Then the whole amount of non-tax revenue will stand thus :—

Death Duties	22 millions.
Post Office (as at present)	4 „
Profits of National and Municipal Trading	10 „
Miscellaneous (Revenue from Crown Lands, Suez Canal shares, etc.)	2 „
New Land Revenue	16 „
Secularised Church endowments	4 „

Total non-tax revenue . 58 millions.

Balance to be made up by taxes and rates, $240 - 58 = 182$ millions.¹

Evidently our confessedly loose calculations will have to be very extensively modified, or some very remarkable change in present conditions will have to take place, before we can hope to wipe out the deficiency which now stands between us and the Utopia of a surplus common fund awaiting distribution.

There are, of course, other theories as to the limits of legitimate private acquisition which would place a much larger non-tax revenue at the disposal of the State. These will be examined in a later chapter. In the meantime the financial reformer will have enough to do in taking off the taxes which at present press unduly on the poorer portion of the community. There is surely much to be said for the view that indirect taxation, except perhaps on such things as alcoholic liquors and tobacco, which the consumer can forego if he chooses without any loss of industrial efficiency, should be got rid of altogether. With that exception, it would seem that a person who is too poor to be taxed directly ought not to be taxed at all. What is more, as has been acutely observed by Mr. J. A. Hobson, any class of persons really below the poverty line

¹ In the Budget for 1911-12, as outlined by the Chancellor of the Exchequer on May 17, 1911, the national expenditure is estimated at over 181½ millions, instead of 172 millions. On the other hand, his estimate for the death duties was over 25 millions, *i.e.* three millions in excess of my estimated average.

cannot in the long-run be reached by indirect, any more than by direct, taxation. Just as the Customs Duty paid in the first instance by the importer is in general thrown back upon the consumer by means of enhancement of price, so the consumer in his turn, supposing him to be a wage-earner, in receipt of a low subsistence wage, will throw it back upon his employer in the shape of a demand for higher wages. If the demand is not conceded, the supply of efficient labour will contract, and the whole trade will decline. The employer again, supposing his previous profits to have been only just sufficient to make it worth his while to carry on the business, will be compelled by the increasing wage-bill to throw it up, unless he can recoup himself by raising the price against his customers, or unless he can obtain advances at lower interest from the capitalists. And so the incidence of the tax is shifted about until it settles on some one so situated that the exaction will not make it less worth his while than before to go on doing the work by which he has hitherto made his livelihood. That is the case with those workers, in whatever line of life, whose wages or profits are unnecessarily large, and with all non-workers in receipt of unearned incomes. It is on these classes that every tax, wherever imposed in the first instance, will ultimately settle, unless it is destined to cripple permanently some or all of the industries immediately, or intermediately, attacked. But inasmuch as this consummation will only be reached, if at all, after much friction and individual suffering, it has been argued with much force that the system should be so framed as to hit, as far as possible, all "unproductive surplus," and nothing else. This seems to be the underlying principle of a large part of the Budget of 1909.

In applying this principle, however, it must not be forgotten that wealth which represents the savings of the present possessor out of his past earnings cannot be confiscated without weakening the motives for working and

saving for all others in like case. Whether saving is a practice to be encouraged or discouraged depends upon circumstances. It is quite possible, as has been well shown by Mr. Hobson, for capital to be overabundant in the upper ranks of the community in proportion to the spending power of the masses. Useful work is, of course, always to be encouraged, but the encouragement may take too costly a shape in those (it is to be hoped) rare cases where nothing short of the prospect of accumulating enough to make perpetual provision for a series of idle descendants will induce a man to do the best of which he is capable.¹

When once compulsory taxation has been limited to the exact amount required, in excess of legitimate non-tax revenue, for the necessary expenses of government as here defined, the problem of equitable assessment will be immensely simplified. Of what remains of it the best solution will be found in leaving as far as possible untouched the minimum wage necessary to elicit every kind of socially useful effort, bodily or mental, and then in searching for, and attacking, every species of unproductive surplus.

¹ It has been ingeniously argued (Mallock, "The Nation as a Business Firm," p. 202) that the income arising from heritable property is "earned" in so far as it is the creation of the parents or grandparents of those at present possessing it, because "most men to a certain extent, and men of exceptional energy to an exceptional extent, identify their own interests with the interests of those who belong to, and will outlive them. Their energies are bound up with a projection of their efforts into a future, certainly not illimitable, but probably reaching as far as the second yet unborn generation." True; but if such men possess wisdom at all proportionate to their energy, they must see that their best chance of "founding a family" (in any worthy sense) does not lie in imposing on unborn descendants the responsibilities and temptations of a position to which they may prove quite unfit, but in giving a good start, in their own lifetime, to those children, if any, whom they have themselves trained and can trust. To this rational form of self-realisation high death duties will be rather a stimulus than an obstacle.

THE ALLEGED "ERROR OF DISTRIBUTION."

In a well-known modern work¹ the inequalities of wealth among the inhabitants of the United Kingdom are spoken of throughout, in so far as they are considered by the writer to be socially injurious, as "errors of distribution." This implies that it is the right and duty of somebody, presumably the State, to distribute all the wealth in the country as it is produced. Does this assumption accord with fact?

Certainly, so far as law is concerned, there is nothing in the way of distribution that Parliament cannot order; and the contingency of any new law respecting property being directly disobeyed, though a by no means impossible one, may for the present be ignored. But there are two other considerations which limit very materially the practical significance of this legislative omnipotence. One is the difficulty of obtaining a parliamentary majority prepared to deal drastically with the existing possessors of wealth, considering the almost inevitable preponderance in any representative assembly, even if elected by universal suffrage, of men who have benefited more or less by the existing distribution. The other is that wealth has to be created before it can be distributed, and parliamentary omnipotence does not extend to the creation of new wealth. All that the State can do is to operate favourably or unfavourably on the motives which spur men to the efforts by which alone the forces of nature can be compelled to subserve the uses of man. This it can do by the manner in which it frames and administers the laws of property; and a mistake made in the discharge of this function—a law, for instance, of entail or endowment, subordinating the interests of the living to the commands of the dead, or a lax administration of justice, enabling the idle to prey upon the industrious—may be an important contributory cause

¹ "Riches and Poverty," by L. Chiozza Money (1905).

of unjust distribution ; but this is a very different thing from saying that every undesirable inequality in the incomes of individuals points necessarily to some error or neglect of duty on the part of the State. If some think too much of money-getting, others too little ; if some work too hard, and others not hard enough ; if some are lucky in their ventures, and others unlucky ; if some wealth lawfully acquired is stingily hoarded or foolishly squandered,—no measures which the State can take consistently with even-handed justice will prevent the resulting inconvenience.

Statesmen who propose in time of peace taxation which would be appropriate to a war budget, and who plead in justification that they are engaged in a war against poverty, are claiming for themselves a rôle more ambitious than we Libertarians are prepared to allow them, and have formed an exaggerated idea of the potency of the weapons momentarily placed at their disposal. Injustice is the enemy with whom it is their business to make war. Poverty may, or may not, be an indication of that enemy's presence, just as a blaze on the horizon may represent either the havoc wrought by an invader or the carelessness of a householder. But it is not itself the enemy—not the enemy of the statesman as such. Those who would consecrate themselves to a war against poverty must learn to use, as a rule, quite other weapons than budgets.

The demand for compulsory equalisation of wealth is sometimes disguised under the misleading phrase "equality of opportunity," which has a much more modest sound, but comes to much the same thing as it is practically understood and preached. It is never possible to predicate of two persons possessing unequal incomes that they enjoy precisely equal opportunities. Unless each increment of wealth represents some additional opportunity for self-realisation and self-expression, it is not wealth at all in the estimate of rational persons.

A recent writer, by no means the most extreme among our English Collectivists, demands under this title for every citizen—over and above that equality before the law which, as he truly says, is illusory unless civil as well as criminal justice is administered gratuitously, and over and above that public ownership of the undeveloped forces of nature for which we also have contended—free, or quite unremuneratively cheap, conveyance to all parts of the United Kingdom by railway (why not also by steamship to the Antipodes ?) ; State insurance against disablement by accident or disease, and against unemployment caused by a trade crisis or the like ; loans of capital on easy terms from State banks ; equality of access to knowledge and culture.

“Neither poverty, nor ignorance of parents, nor premature wage-earning, nor defects of teaching apparatus, shall keep any person from any sort of learning which will improve his understanding, elevate his character, and increase his efficiency as a worker and a citizen.”¹

If any greater advantages than these are enjoyed by the son of a millionaire, we have only to point them out to Mr. Hobson, and he must, as it seems to me, add them to his list in order to preserve his consistency.

¹ See “The Crisis of Liberalism,” by J. A. Hobson, part ii. chap. ii.

PART II.

COMPETING THEORIES OF STATE FUNCTION EXAMINED.

OUR task may seem to be finished when we have traced to the best of our ability all the necessary implications of the idea of the State as a Justice-Enforcing Association. But an idea, like a material object, needs for its full appreciation to be seen against a contrasted background ; and in this case there happen to be at least three competing theories sufficiently well-known and sufficiently dissimilar to serve that purpose.

The first, which I have called the Neo-Hegelian, may be regarded as a modernised version of Burke's " partnership in every virtue and in all perfection," noticed in Chapter I.

The second is that Collectivism, or State Socialism, of the extreme Marxian form of which Mr. Belfort Bax is the most thoroughgoing English exponent, but which deserves more serious attention in the mitigated forms that it assumes in the hands of Mr. J. A. Hobson, Mr. and Mrs. Sidney Webb, and the Fabians generally.

These two theories differ fundamentally from ours as regards their starting-point, or, if the reverse metaphor be preferred, as regards the goal which the statesman is to set before him. But it is hardly less important to note the divergences which have been forced upon us in the course of our investigation from those thinkers whose starting-point (or goal) was the same as our own.

Accordingly I discuss in the last two chapters the Individualism of Herbert Spencer, the Voluntaryism of Auberon Herbert, the Individualism of Mr. J. H. Levy, and various recent manifestations of anti-Socialist opinion in relation to current practical politics.

CHAPTER XIII.

THE NEO-HEGELIAN CONCEPTION OF THE STATE AS THE EMBODIMENT OF THE GENERAL, OR REAL, WILL.

IN adopting the above title for this chapter the two writers whom I had chiefly in my mind were the late T. H. Green, of Oxford, and his disciple and editor, Professor Bernard Bosanquet. The latter, in his "Philosophical Theory of the State," put Hegel first among the modern writers with whom the essence of his theory is to be found, and devotes a chapter and a half specifically to the "Philosophy of Right." It is true that he traces its pedigree back beyond Hegel to Rousseau, and beyond Rousseau, in the narrower form appropriate to the mere "City-State," to Plato and Aristotle. But what chiefly impresses us in the English presentations of the theory is the prevailing flavour of German metaphysics, and to indicate this the name "Neo-Hegelian" seems the most appropriate.

The problem to which these writers address themselves is to find an ethical justification for coercion by the State, and a satisfactory explanation of the duty of obedience to law; and the solution that they offer consists in assigning new meanings to such familiar terms as "Right" and "Liberty," and in drawing a highly subtle distinction between the "actual will" and the "real will" of an individual or group of individuals. Rightly rejecting the crude notion that coercion ceases to be such

when sanctioned by the vote of a majority, they would fain persuade us that the sting will be taken out of it so soon as the right-minded citizen learns to regard it as the coercion of himself by himself—that is, of his worse by his better and more permanent self.

Man is not fully man, cannot develop the faculties by virtue of which he is superior to the beasts, except as a social being. In order to do himself justice, he must find a place for himself in an organised community, in which he has some special work to do for others, and is in turn helped by their diverse activities. He must, in so far as he is rational, desire the success of the whole as a going concern. Consequently—(this is the boldest and most debatable step in the argument)—those who represent the State for the time being are fully justified in compelling him to take his place in the social organism, to conform to its rules, and to contribute his quota of service for the common good. In applying such compulsion they are merely, according to the startling paradox of Rousseau, “forcing him to be free.”

“The claim to obey only yourself is a claim essential to humanity; and the further significance of it rests upon what you mean by ‘yourself.’ Now, if it is true that resistance to arbitrary aggression is a condition of obeying only ourselves, it is more deeply true, when man is in any degree civilised, that in order to obey yourself as you want to be, you must obey something very different from what you are.”

It is alleged that only by taking this view of liberty is it possible to give a satisfactory meaning to the term “Self-Government.” To make the word fit the facts, you must, say these writers, consider that in becoming a member of a political society you are enlarging your self-government—power of self-direction—in two ways at once; not only by restraint of evil-doers who would interfere with your external freedom by robbing and maltreating you, but also by restraining those propensities of your own nature which are at war with your better and more permanent self.

Now it is, of course, quite true that to the well-disposed citizen the fact that the Government will restrain him as well as his fellow-citizens whenever he is tempted to go astray, ought to be an additional reason for supporting and obeying it ; but is it no sufficient reason for making the one term, " Self-Government," cover two utterly different notions. It is also quite true that " Self-Government," as commonly understood, is a brief and popular, and therefore necessarily unscientific, phrase. It has, in fact, two popular meanings, of which one, or both, or neither, may happen to be applicable to any given political arrangement. It sometimes means that a relatively large proportion of the community are in some sense rulers as well as ruled, having some voice in the making of the laws and election of the officers whom they are required to obey; sometimes that the Government, whatever its internal form, is independent of foreign control, or less dependent than some other with which it is contrasted. Thus we should speak of Australia as self-governed in comparison with Abyssinia in one sense, and of Abyssinia as self-governed in comparison with Australia in the other sense. It is no doubt desirable, as it is generally easy, to make clear in using the expression which of these meanings is intended ; and it is also important to keep constantly in mind that the fullest possible " Self-Government " in the democratic sense is a very different thing from each individual being actually his own master. But these are only the ordinary precautions which are continually forced upon us by the inevitable imperfection of language. They do not justify resorting to a *tour de force* which obscures the real nature of government, and introduces questions quite foreign to ordinary political discussion.

We may leave it to philologists to explain how it has come to pass that two expressions so naturally equivalent as " self-control," and " self-government," have acquired by usage such widely different significations ; the former

denoting the mastery of one part of an individual soul over another part of the same soul, the latter a particular relation between political bodies. But it concerns all lovers of clear thinking that the distinction once established should be maintained, or that at all events the same expression should not be stretched to cover radically different phenomena. And from our special point of view it is further necessary to insist that the proper limits of State action ought to be determined by reference to the principle of restraining aggression, not by reference to any such collateral purpose as that of rendering individuals more completely masters of themselves. If social aids to self-discipline are required, over and above those incidentally supplied by the purely defensive action of the State, and by collision with other wills within the bounds of law, in the course of business, and in social intercourse, such aids can always be provided by voluntary contract and voluntary association. Churches, mutual improvement societies, clubs, guilds, and brotherhoods of all descriptions never fail to spring up to occupy the space vacated by the State, and operate all the more effectively when entirely dissociated from the rough agencies of the soldier and the policeman.

It is due to the Neo-Hegelians to admit that this consideration had not entirely escaped them. Professor Bosanquet, for instance, reminds us that the promotion of morality by force is an absolute self-contradiction, and T. H. Green had previously pointed out that "the enforcement of a certain outward act, the moral character of which depends on a certain motive and disposition, may often contribute to render that motive and disposition impossible; and from this fact arises a limitation to the proper province of law in enforcing acts." But by affirming that "the real function of government is to maintain conditions of life in which morality shall be possible," and that the powers to be assigned respectively to the State and to individuals should be such as may be

found necessary to "an effectual self-devotion to the work of developing the perfect character," they leave room for advocacy of restrictive measures, and of tax-supported institutions, which on our view of the proper end of government are less easily defensible. Thus the State may, according to them, "try to hinder illiteracy and intemperance by compelling education and by municipalising the liquor traffic"—though it should not attempt to "hinder unemployment by universal employment, overcrowding by universal housebuilding, and immorality by punishing immoral and rewarding moral actions." In our view both classes of measures are alike mischievous, or if there is any difference it is only in degree, not in principle.

RIGHTS.

Under this head the departure from common usage is not quite so glaring as in respect of Liberty and Self-Government.

Common usage, as trimmed by Austin into the degree of precision required for juristic purposes, gives something of this kind. A party has a legal right, when another, or others, is or are obliged by the law to do or forbear from doing something in respect of him. Thus, to say that the law will on my application compel my employer to pay me the stipulated wage, is the same thing as saying that I have a legal right to that wage. And to say that the law will punish any one who robs me of my watch, and will not interfere with any use that I may choose to make of that watch, is to say that I have a legal right to that watch.

When we pass from positive law to ethics, we still mean by a moral, or natural, right, the obverse aspect of a moral, or natural, duty, looked at from the point of view of the person who will benefit by the performance, and suffer by the violation, of that duty. In whatever sense I admit that I *ought* not to kill or rob my neighbour, or that I

ought to pay a wage for services rendered, in that same sense I shall naturally speak of him as having a right against me—with just one reservation. In admitting that I ought to help a perfect stranger in distress, I am hardly required by common usage to admit that the stranger has a (moral or natural) right to my assistance. We feel somehow that, though an act of pure beneficence may be done from a sense of duty, the recipient of a gratuitous benefit ought not to think of his benefactor as merely doing his duty, nor, consequently, of himself as having merely obtained recognition of his right. The duty as it presented itself to the benefactor's mind, however he might explain it to himself, was certainly a general duty,—to make the most of his opportunities for doing good,—and it was for him alone to judge whether this particular case of distress was better worth attending to than any other useful business that he might have on hand.

Juristic usage tends to regard rights as necessarily inherent in persons—that is, in law-worthy human beings; but this is merely because the lawyer's practical concern is with people who can appear in Court as plaintiffs or defendants; popular usage, when dealing with moral rights, has no need to observe, and does not observe, this limitation. In no slave-holding country, civilised enough to have a literature, have the moral obligations of masters entirely lacked recognition; and in modern England, as we have already had occasion to observe (Chapter VIII.), an immense number of cultivated people are in the habit of passionately asserting that animals have rights. And they are justified in so doing, provided it is clearly understood that the animal's merely *passive* right lacks some important features belonging to the *active* rights attributed to adult human beings.

Whenever we acknowledge a *duty* to refrain from injuring a sentient being, we can hardly refuse to speak of him, or it, as having a *right* to immunity from ill-treat-

ment. But if that sentient being is incapable of formulating an articulate demand for redress, or of signifying acceptance of such redress as may be offered, or of understanding the duty of reciprocal good behaviour, the greater part of the incidents that a lawyer connects with the possession of a right are inapplicable. Yet what remains is not so wholly valueless that we can afford to ignore it altogether, as Green does when he defines a right as "on the one hand a claim of the individual, arising out of his rational nature, to the free exercise of some faculty, and on the other hand as a concession of that claim by society, a power given by it to the individual of putting that claim in force." According to him, "it is only a man's consciousness of having an object in common with others, a well-being which is consciously his in being theirs and theirs in being his,—only in the fact that they are recognised by him and he by them as having this object,—that gives him the claim described." And, of course, from this point of view "there can be no reciprocal claim on the part of a man and an animal each to exercise his powers unimpeded by the other, because there is no consciousness common to them." But neither are the whole of the rights which the law allows to human beings accounted for under Green's definition. A charge of assault may be sustained for a blow which merely caused momentary pain, and did not in any way interfere with the sufferer's freedom of movement, or with the free exercise of all his faculties. The killing or ill-treatment of infants and lunatics is commonly treated as a violation of rights inherent in them, though there is here no rational nature, and no consciousness of a common object. At the same time it must be admitted that to human beings the chief use of a merely passive or negative right to immunity from injury, in a world where no human being can exist without aid from others, is to serve as a basis of negotiation for exchange of services and sacrifices. Though it is

true that I cannot freely exercise my faculties unless I am protected against those who would rob or enslave me, it is no less true that this protection will not enable me to maintain myself by my own exertions, unless I use my liberty to exchange my services for the services and commodities that I require from others—unless, in other words, I surrender to some employer, for a sufficient consideration, a large part of my original right. Animals share with infants and lunatics the inability to make bargains of this kind, as well as the inability to put the law in motion for the vindication of their right.¹ It would be quite within the province of the State to insist that the animals whose services or whose bodies are required for human use should be so treated that the benefits derived by them from human aid and protection should balance the sacrifices exacted from them in the shape of compulsory labour, pain, or premature death, thus in effect making contracts for them as we make them on behalf of infants and lunatics. But it must be owned that the data for such calculations of pleasure and pain are somewhat scanty, even with regard to the animals nearest to man in constitution; and at present neither law nor public opinion has advanced beyond the extremely loose conception of a duty to observe a reasonable proportion between the animal suffering inflicted and the human benefit expected.

¹ History records one instance of the kind that is said to prove the rule. I do not refer to the remonstrance of Balaam's ass, but to another animal of the same species of whom a story is told in connection with the Mogul Emperor Jehangir. He had a contrivance for coming into touch with any aggrieved subject, without the intervention of any official, consisting of a bell suspended outside the palace wall within reach of the passers-by, and communicating with his private apartment. He was waked up one night by loud and continuous bell-pulls, and it turned out that the supposed petitioner for justice was a starved donkey which had got entangled with the bell-rope in its efforts to get at the grass growing in the crevices of the palace wall. The owner of the poor animal was thereupon summoned before the Emperor, and admonished to treat it better in future.

In our view, neither reciprocity nor consciousness of a common good to be aimed at are necessary ingredients of a moral or natural right, though they are undoubtedly features which enhance very materially the respect due to such a right. In our first chapter the proper attitude of a justice-enforcing association towards individuals claiming to ignore it, and refusing to contribute towards its support, was briefly indicated, to the effect that direct compulsion to join the association is not strictly justifiable, and is also unnecessary, inasmuch as the position of an outsider, unable to claim public assistance when in the right, but exposed to the full weight of public hostility when deemed to be in the wrong, would be so uncomfortable as to be practically untenable by any one worth taxing. Any one wantonly injuring such an outlaw would be pronounced by all sound moralists to have done a wrong ; which is equivalent to saying that he had violated a right, though for want of reciprocity it might be no part of the State's business to interfere for the protection of that right.

THE STATE.

After explaining the Neo-Hegelian view of Liberty, Right, and Self-Government, there is not very much more to be said as to their conception of the State, and of the grounds and limits of the obligation to support it. We have already quoted the dictum that " the real function of government is to maintain conditions of life in which morality is possible " (Green). No man can exercise all his faculties to the full, and become the best that he is capable of becoming, except as a member of an organised society, each member of which has some special function whereby he contributes to the common good. But each individual (barring, I suppose, the perfect saint on the one hand and those who may be called spiritual idiots on the other hand) is swayed more or less by conflicting

desires, some of which can, while others cannot, be fitted into the social scheme of life. Each individual, so far as he is rational, must wish that he himself and all the other members should be restrained from developing the anti-social at the expense of the social side of their nature. This is each person's Real, and permanent, Will, in the sense that this would be the ultimate result of the conflict among his various desires, worked out logically to the end, though it may not express his actual state of mind at any given moment. Such a person will therefore obey and support any government, whatever its origin and however constituted, and whether he has a voice in its management or not, which does in any tolerable fashion discharge this function of restraint and adjustment. The aggregate of these real, permanent wills of individuals constitutes the so-called General Will of which the State is the organ. Though it is essential to the efficiency of the State that it should be capable of bringing force to bear on recalcitrant individuals, it is not the possession of this power, but the use of it in furtherance of the General Will, that is the essential characteristic of the State. "We can only count Russia as a State by a sort of courtesy, on the supposition that the power of the Czar, though subject to no constitutional control, is so far exercised in accordance with a recognised tradition of what the public good requires as to be on the whole a sustainer of rights."

Green, so far following Austin, uses the term "Sovereign" to denote the determinate body of persons whose collective decision is final in legislation and administration. He speaks of the Sovereign of, or in, a State, and of sovereignty as the essential characteristic of a State, but the State itself he defines as "a society which has a systematic law, in which the rights recognised are harmonised, and which is enforced by a power strong enough at once to protect the society against disturbance within and aggression from without."

Professor Bosanquet amplifies and modifies this account of the matter as follows :—

“It is such a real or rational will (as above described) that thinkers after Rousseau have identified with the State. The State as thus conceived is not merely the political fabric. The term ‘State’ accents, indeed, the political aspect of the whole, and is opposed to the notion of an anarchical society. But it includes the entire hierarchy of institutions by which life is determined, from the family to the trade, and from the trade to the Church and the University. It includes all of them, not as the mere collection of the growths of the country, but as the structure which gives life and meaning to the political whole, while receiving from it mutual adjustment, and therefore expansion and a more liberal air. The State, it might be said, is thus the operative criticism of all institutions—the modification and adjustment by which they are capable of playing a rational part in the object of human will.”

This seems to make of the State not so much a distinct institution as a quality or predicate of other interconnected institutions. But for most practical purposes the words “State” and “Sovereign” are by both of these writers treated as interchangeable ; and we may perhaps take it that for them an aggregate of human beings becomes a political society, or State, if and when, besides being conscious of reciprocal rights and duties, they have formed the habit of looking to the holders of certain offices, armed for the purpose with sufficient coercive power, to interpret and give effect to the general will that these rights should be maintained and these duties enforced ; and that this governing body is the Sovereign of the State, and may be spoken of for shortness as the State.

So far, I see no great objection to their analysis, which is perhaps an improvement on Austin’s in that it expressly excludes from the category of States those Governments (if any such there be) which rest upon sheer force, without any consciousness of a common moral aim as between rulers and subjects. My dissent from these writers relates to their definition of the end, and the consequent limit, of State action. As moral philo-

sophers they command my admiration, and if the State were a purely voluntary association of persons inspired by similar ideals, its declared aim, and its regulations, both positive and negative, might very well be such as they propose. In preaching, it is hardly possible to lay too much stress on the solidarity of the human race, the impossibility of self-realisation except through active membership of a society, and the worthlessness of any kind of freedom which does not imply increased power and scope for beneficent action. But for the statesman other considerations arise. We have seen that the State must, if it is to do its work at all, claim the obedience of every one within the local range of its operations. But local contiguity affords no guarantee whatsoever of similarity in moral ideas. If the pressure of governmental authority is to be felt as a blessing rather than an affliction by all the forty-three millions of the British Isles, care must be taken that it shall if possible be felt only where the alternative would be more painful pressure from irregular and irresponsible aggressors, and that the motives appealed to on its behalf shall be of the simplest and most universal kind. And it is here that the Spencerian formula of "equal freedom"—in the ordinary negative sense of that term—seems to me preferable to the more refined and transcendental formula of "maintaining conditions favourable to morality," or "developing the perfect character."

We have to deal with the most various types of humanity,—Teuton and Kelt, European and Oriental, Christian and Non-Christian, Catholic and Protestant, Puritan and Epicurean,—but they may be assumed to have mostly in common a preference for a whole skin, for free locomotion, for opportunities of acquisition and security of possession, and a feeling that any agency which maintains these conditions in any tolerable degree is worth supporting at some sacrifice. They cannot be assumed to have in common any particular conception

of the perfect life, or such a degree of confidence in any set of men whom even the best political machinery yet devised may lift into power, as would incline them to depute to the Government the task of deciding for each how his freedom should be used. To bring it about that the exercise of irresistible force over so vast and heterogeneous a multitude shall be associated with the spirit of impartial justice is in any case an immense achievement. To complicate the choice of agents for this purpose by demanding other qualities, however valuable in themselves, would be to convert difficulty into impossibility.

The "general will" about which these philosophers were really most concerned—*i.e.* the conjoint will of the "men of good will," the will of humanity at its best—does not find its most effective expression in laws and acts of State, over which "men of ill will" must generally in the nature of things exercise an influence approximately corresponding to their numbers, but in the voluntary institutions which draw men together on the basis of common sentiments and ideals rather than of mere local contiguity. To stretch the term "State" so as to cover all these non-official agencies is to debase our linguistic coinage without any compensating gain.

It may be legitimate to describe Society as an organism, but if so it must be identified with something either greater or smaller than the State. The Leviathan metaphor is misleading in this respect, that whereas the cells of the human body are wholly bound up with that body, and have no separate relations with any outside body, the citizen of an independent State may, and often does, have closer relations with individual members of other States than with most of his fellow-citizens or with his own Government. The English capitalist may have most of his money invested in Argentina or Brazil. The English manufacturer may have his best customers in China or Japan, and may be more concerned to study

their tastes than those of his next-door neighbour. The thoroughgoing Marxian Socialist is interested in the "class-war" all the world over, much more than in the armaments and the diplomacy of his own country. The English or Irish Roman Catholic is directed in the matters which most deeply concern him from the Vatican; the dressmaker and lady of fashion from Paris; the artist from Italy. The musician and the metaphysician look, or used to look, to Germany; and if the merchant or the financier has his thoughts more constantly directed to London than to any other spot, it is not as the seat of empire, but as the centre of commerce. Conversely, the works of English writers and the precedents of English history supply much of their motive power to the Hungarian, the Russian, the Turkish, and the Persian Liberals.¹

The attempt to force upon mere neighbours, as such, closer co-operation than the interests of peace and order require, is apt to check, instead of promoting, the growth of a genuine spirit of fraternity. The Jacobin interpretation of fraternity, "Be my brother, or I'll kill you," is not the language of sound statesmanship. The Neo-Hegelians would not, of course, accept this as a fair description of their policy, and we have already given them credit for drawing attention to the danger of weakening the springs of truly moral action which is involved in every appeal to the motive of fear. Nevertheless, we find, as might have been expected, when we come to concrete applications, that the working out of their principle involves a good deal of compulsion—both direct in the shape of commands and prohibitions, and indirect in the shape of State expenditure to be met by taxation—which on our principles might and should have been avoided.

¹ These considerations are overlooked by Mr. J. A. Hobson, in his interesting comparison between the State and the human body, "Crisis of Liberalism," p. 70.

Thus, they share the general modern opinion in favour of State-provided and compulsory general education ; which certainly fits in well enough with the notion that the sort of freedom which it is the business of the State to maximise is the positive capacity for worthy action, but which does not fit in at all with the maximising of freedom in the ordinary negative sense of the term. On the cognate question of a State Church, I do not remember any pronouncement by either of the writers referred to ; but such an institution is manifestly easier to defend on their principles than on ours. Again, they are apparently in favour of municipalising the liquor traffic. We are opposed alike to public management and to prohibition, on the ground that there is no aggression, and therefore no justification for interference with either freedom of trade or freedom of diet, except where an individual has actually made himself a public nuisance and danger by getting drunk, or where a trader has actually incited his customers to get drunk.

These differences are important, and others would doubtless emerge on closer study of all the logical implications of our respective theories. But the difference in principle is slighter, and the range of practical agreement considerably wider, than with regard to the theory known as Socialism, or Collectivism, to be discussed in the next chapter.

CHAPTER XIV.

COLLECTIVISM.

I HEAD this chapter with the least ambiguous of the current phrases used to denote that theory of State function the advocates of which are in the habit of claiming for themselves the exclusive use of the more popular and comprehensive term "Socialism." And I take the definition of it from that one of all the English writers known to me who makes this exclusive claim in the most uncompromising fashion. According to this champion of Socialist orthodoxy, the principle of Collectivism, or Socialism properly so called, is "the assumption by the people—in other words, the concentration in the hands of the democratic State—of land, raw material, instruments of production, funded capital, etc., in such wise that each citizen shall obtain the full product of his daily labour, neither more nor less, inasmuch as each citizen shall have to contribute his share to the necessary work of Society."¹

In this scheme the only function ostensibly assigned to the State is a strictly material and economic one. The same writer actually describes it elsewhere as a scheme for substituting "administration of things for government of persons." But a very little reflection will show that it is in reality not a case of substitution but of addition. The administration of things transferred from public to private hands implies of necessity not less, but more, government of persons. The State is to be the only

¹ "Essays on Socialism, New and Old," by E. Belfort Bax (1906).

capitalist in the community, and consequently the only, or at all events the only large, employer of labour. Broadly speaking, no one is to have any means of subsistence except what may be allotted to him by the State, as the appropriate wage for the labour exacted from him by the State. Each citizen is therefore absolutely dependent on the goodwill of the agents of the State for the time being both as to the kind of work he is required to do, and as to how much he is to get for it. Whether each citizen's daily or weekly wage is to be considered to represent, in the language of Mr. Bax, "the whole product of his labour, neither more nor less," or whether, as proposed by Mr. Bax's teacher, Karl Marx, the formula is to be "from each according to his capacity, to each according to his needs," would seem to be a question of considerable theoretical importance; but Mr. Bax does not appear to be conscious of any divergence between himself and his master on this point, nor does he suggest any method of valuing "the whole product of each man's labour," after the existing test of competition has been abolished. Anyway, it is clear that all persons are to be under the government of the "administrator of things" during all the working hours of every working day. It is true that by way of compensation for this Mr. Bax proposes to abolish the whole law of contract and all courts of civil jurisdiction, and this may seem to involve a considerable curtailment of the province of the State; but the reason he gives for this proposal shows how small is the curtailment in comparison with the enlargement. When nobody possesses any capital, and trade is limited to the expenditure of slender State-paid wages at State-provided stores, the only matters, as he seems to think, about which people will have occasion to trust each other's promises will be matters of so insignificant, or else of so purely personal and delicate a nature, that the community will be either unconcerned or incompetent to deal with them, and

individuals may well be left to trust or distrust their neighbours as they feel inclined, at their own risk. He shuts off another large field of litigation by refusing any sort of legal redress, either civil or criminal, for libel and slander. Wilful violence done to any member of the community is to be treated as an offence against the community, and therefore criminal, which means apparently that the offender may be punished, but that the unfortunate victim will get no compensation. Why violence should be differently treated from cheating and defamation is not explained; but the general principle, however inconsistently applied, seems to be that "the more or less obscure question, who is right in a personal quarrel, cannot possibly concern society as a whole." All that does concern society as a whole, so we are given to understand, is the production and distribution of wealth; but the control of every man's working hours and means of living invests the official agents of society with such absolute power over every individual member that the proclamation of partial anarchy during the few non-working hours—the licence to cheat and lie with impunity, coupled with the stern punishment meted out to the victims who may presume to horsewhip their defrauders or traducers—will perhaps make less difference to them than it would to us in our present condition of proprietary freedom.

Whether the Baxian Socialistic State will include among its functions that of universal education, I do not find expressly stated; but we are very distinctly told that the believer in doctrines which seem to Mr. Bax superstitious—that is, any of the doctrines of popular, traditional Christianity—will not be allowed to teach them to his own or other people's children. And not only children, but all "ignorant and weak-minded people," are to be protected by law against such teaching as that of the Salvation Army or the Catholic priest.

“Freedom to hold and propound any theory, however absurd, as a theory to be judged of, and accepted at the bar of reason,” is indeed “of the essence of real liberty,” but it is only where the persons addressed are, in the opinion of the Government, sufficiently strong-minded not to be led astray by sensational rhetoric. So we have here, even without direct State education,—which, however, is probably approved by Mr. Bax, and certainly by most Socialists,—yet another formidable and sinister enlargement of the sphere of action assigned to the State.

And what is this State, according to Mr. Bax? It may, or may not, be democratic. “The rights of majorities are a bourgeois idol.” . . . “The abstract principle of the right of the majority is of as small concern to the Socialist as the equally abstract principles of liberty of contract or liberty of conscience.” It is true that when the revolution has been fully accomplished, and capitalism has been destroyed, it is supposed that the Socialist party will be transformed into the absolute majority of the nation, and *then* this majority, consisting of those who agree with Mr. Bax, will be allowed to rule. But till then “it is to the Socialist minority that individuals, acting during the revolutionary period, are alone accountable.”

Mr. Karl Pearson, Mr. and Mrs. Sidney Webb, Mr. H. G. Wells, and many others, are commonly classed, and class themselves, as Socialists, or Collectivists, in a broad, but not in the narrow Marxian, sense. They aim at gradually altering in favour of the State the present proportion between public and private property, and at substituting State regulation for free contract over a large part of the field of labour—wherever, in short, they deem that superior wealth gives the employer an undue advantage in bargaining over the employed. And inasmuch as individuals cannot be compelled to

employ labour on the terms fixed for them by law, if they do not see their way to carrying on a remunerative business on such terms, this policy necessarily involves the artificial creation of unemployment, to be met by a public provision either of artificially devised employment, or of maintenance without employment. But they do not, like the Marxians, avowedly seek to make the State the sole owner of all the means of production, and the sole employer and paymaster of all the citizens. All the writers named deserve serious examination, but it is in the works of Mr. J. A. Hobson, commencing with "Problems of Poverty" (1891), and ending with "The Industrial System" (1909), that we get the very best that can be said from the economic point of view for a modified Collectivism. I at all events have learnt much from him, and find little that I am able or disposed to controvert, so far as the diagnosis of the causes of poverty is concerned, though I might find something to add. It is chiefly as to the choice of alternatives, each possessing certain advantages, and each involving certain risks, that we part company.

Repudiating the fantastic notion (which, however, found favour, as he reminds us, with such diverse thinkers as Bacon and Ruskin) that in every trading bargain what one gains another loses, and admitting that every buyer and seller in a market, assuming that he is guided by self-interest and knows what he is about, makes some gain from his bargain, he nevertheless demonstrates by very elaborate analysis that there is nothing in the economic nature of a market to secure equality of gain for any two bargainers. The modern industrial system is pictured as a single organic whole, continuously engaged in converting raw materials into commodities, and apportioning them, by a continuous series of payments, as incomes to the owners of the factors of production in the different processes. This continuous distribution of the products is said to be achieved by a number of

detailed money prices paid to workers, capitalists, landowners, entrepreneurs, for productive services rendered, and each payment evokes a fresh application of productive power. It is admitted that "the primary effect of this distribution of wealth is to cause the different factors of production to dispose themselves in the appropriate forms and quantities throughout the industrial system, and to give out their full productive power in response to the stimuli of payments." But it is rightly insisted that these necessary payments, here described as "costs," do not exhaust the whole value of the product. There is always a margin between the minimum that the owner of each factor—the labourer, the landowner, or the capitalist—can afford to accept and is willing to accept rather than remain unemployed, and the maximum which the entrepreneur, or organiser of the concern, would be prepared to pay rather than let the work come to a standstill for want of the required factor. For this debatable part of the product he accepts the Marxian denomination, "surplus value," but he does not, like Marx and his followers, assert that the labourer is ordinarily unable to secure any portion of it, and forced to content himself with a bare subsistence wage as the only alternative to starvation.

In the first place, he notes that it may be, from the entrepreneur's point of view, worth while to pay something more than the bare "costs" which are necessary to maintain the current output of productive energy, in order to bring about an increase of industrial structure or power. It may be worth while to pay higher wages to the labourer than the minimum rate necessary to keep him and his kind up to their present level of efficiency, in order to enable and induce him to make himself more efficient than heretofore. It may be worth while to do more than merely replace the capital expended in the business, for the purpose of extending its scope or improving its machinery. Surplus value

passing in this way into the hands of either labourer or capitalist is called "productive surplus," and no complaint is made against the system of free competition so far as that is concerned. The only question is as to the justice of allowing the "unproductive surplus" to go to the owner of one or other of the factors of production as the result of his stronger position as a bargainer; to the labourer in the form of excessive wages evoking no increase of efficiency; to the capitalist in the form of excessive interest, or to the landowner in the form of excessive rent, or to remain with the entrepreneur as excessive profit. By the way, so far as the landowner is concerned there can be no question of "productive surplus," seeing that the rent is not paid in order to stimulate any effort on his part, but simply for the use of his land, for which he is in any case in a position to exact the utmost that the would-be lessee can afford to pay. Mr. Hobson analyses minutely the process of bargaining, whether the subject of negotiation happens to be the sale of a commodity, the borrowing of capital, the renting of land, or the hiring of labour; and where the unproductive surplus falls wholly or chiefly to one party as the result of either (1) the greater actual pressure of necessity on the other party, or (2) the greater power and will of the former to divine the state of mind of the latter while concealing his own, he describes this dyslogistically as "forced gain," and would have the State interfere to redress the supposed wrong, either by artificially imposing on the parties a different distribution of the surplus, or, preferably, by confiscating it for the public benefit by some suitably contrived form of taxation.

We have no objection to this when the gains are really "forced" in the ordinary and proper sense of the term. But it is surely a misuse of language to speak of a gain as "forced" which results from the greater necessity of the other party to the bargain.

The extremity of a man's thirst is the measure of the benefit conferred on him by the individual whose luck or foresight enables him to offer the only available cup of water. Whatever price the latter may choose to exact he is within his rights, provided he has done nothing to bring about the necessity; and his gain cannot properly be called forced or unjust, though it may be ungenerous.¹ As to the advantage gained by one of the bargaining parties by concealing from the other his state of mind, as regards the maximum price that he would be willing to give, or the minimum that he would accept, rather than lose his bargain, that also is improperly described as "forced gain." Perfect openness on both sides would no doubt be preferable, but it cannot reasonably be demanded without assurance of mutuality or some specific fiduciary relation.

To repeat what was said in Chapter X., I fail to see any sufficient ground for State interference in either of these cases. By all means let the law do whatever is possible in the way of restraining actual force or fraud, and of promoting what Mr. Hobson calls "transparency" in business. Let it refuse its sanction to contracts that are clearly against the public interest; but there let it stop. Profit obtained by exchange of wealth honestly acquired for commodities voluntarily parted with, or services voluntarily rendered, must as a matter of common sense be regarded as earned income. If it happens to exceed the minimum reward which was needed to evoke the best energies of the particular entrepreneur in question, that is a piece of good luck for him, but no wrong to any one else. The hope of similar luck will be a useful stimulus to other entrepreneurs to face risks which they might otherwise decline. This is not to say that such extra profits may not be fair game for an impecunious Chancellor of the Exchequer, when money is really needed

¹ See on this, Chapter IX. p. 146.

for legitimate State purposes. Nor is it the less incumbent on us to examine carefully the structure of modern capitalistic industry, in order to see whether in any part of it there are actual wrongs capable of being redressed by legislation.

In Mr. Hobson's "Evolution of Capital" it is explained how the immense development of machinery during the last century made it worth while to accumulate wealth in the form of fixed capital adapted to the production of more wealth; how the possession of expensive labour-saving apparatus gradually crushed out the competition of the mere handworker with tools, and carried with it the command of great masses of hired workmen, with nothing to sell except their own labour power, and with no market for that except in the factory; how the vices of our system of land-tenure accelerated the movement, and helped to swell the town proletariat, and how the factory owners used their advantage to the utmost, by buying for a bare subsistence wage the hardest labour, for the longest hours, that the human frame would endure. It was really true, in the early part of the nineteenth century, that the immense superiority of bargaining power on the side of the employer gave him nearly the whole surplus value. And though this inequality has since been considerably mitigated by legislation, by combination among the workmen, and by restriction of the supply, it is still asserted, probably with truth, that "modern organisation of capital, by its abler direction and its longer purse, is able to offer successful resistance in most industrial fields to the more important demands of labour."

On the other hand, the employers have been all this time engaged in ever keener competition among themselves; and in those businesses where machinery plays the largest part the tendency is for larger businesses to squeeze out the smaller. "We find that it is precisely

in those trades which are most highly organised, provided with the most advanced machinery, and composed of the largest units of capital, that the fiercest and most unscrupulous competition has shown itself." A strong light is thrown on the way in which money and thought are diverted from the actual business of production and distribution to that of drawing away custom from rival firms, to the great loss of the community as a whole. Much interesting information is given as to the various forms of "combine" for keeping up prices and securing monopoly profits. "The most common method of crushing a smaller business is by driving down prices below the margin of profit, and by the use of the superior staying power which belongs to a larger capital starving out a competitor." It is truly remarked that though this is sometimes spoken of as "unfair," in contradistinction to ordinary trade competition, the distinction is a fallacious one.

"In a competitive industrial society there is nothing to distinguish this conduct of a trust in the use of its size and staying power from the conduct of any ordinary manufacturer or shopkeeper who tries to do a bigger and more paying business than his rivals. Each uses to the full, and without scruple, all the economic advantages of size, skill in production, knowledge of markets, attractive price-lists, and methods of advertisement, which he possesses." . . . "If these tactics are unfair, it is only in the sense that all coercion of the weak by the strong is 'unfair,'—a verdict which doubtless condemns from any moral standpoint the whole of trade competition, so far as it is not confined to competing excellence of production."

It is not, however, satisfactorily explained, either by Mr. Hobson or by his prophet Ruskin, why competition in respect of cheapness is more immoral than competition in excellence of workmanship. The consumer is equally benefited by either kind of competition while it lasts, as well as by the potential competition which continues to subsist after a so-called "monopoly" has been provisionally established.

It is further contended that this same concentration of capital, which gives an advantage to the large over the small business, also gives a like advantage to the combined employers over their workmen.

“The average employee in a highly elaborated modern factory is on the whole less competent than any other worker to transfer his labour-power without loss to another kind of work.”

“It has been claimed as one of the advantages of a Trust, that the economies attending its working enable it to pay wages higher than the market rate. There can be no question as to the ability of the stronger Trusts to pay higher wages. But there is no power to compel them to do so.”

“One of the economies which a large capital possesses over a small, and which a Trust possesses *par excellence*, is the power of making advantageous bargains with its employees.”

Every new application of labour-saving machinery reduces the demand for manual labour, even allowing for the new labour employed in making the machinery, unless the consequent cheapening of the product induces a largely increased consumption, either of the particular commodity in question or of other commodities. A constantly recurring phenomenon in modern industrial communities is over-production and under-consumption. The winners in industrial competition, enriched beyond their spending capacity, having fully satisfied all their present desires, can find nothing better to do with the surplus income that keeps coming in than to look out for investments which will give them a still larger income in the future. This means setting up more machinery for the production of goods beyond the amount for which there is a present effective, profit-yielding demand. Though there are plenty of people who would like to purchase more food, clothing, housing accommodation, and so forth, these are not the people who are able to offer remunerative prices for what they want. The money which would suffice to buy all the goods that the factories

are ready to produce is locked up in the possession of the few rich who have no unsatisfied wants, and no motive for increasing their consumption. They do not cease to accumulate and invest, because, even if they are aware that there is a glut of capital seeking investment, they may hope to make their individual profit by ousting some other less well-informed or less influentially backed investor. For in this field also the large capitalist holds a position of vantage as against the small investor.

It is also pointed out that the cheapening of food and other necessities which may result from increased application of capital to production will only increase the spending power of the higher grades of wage-earners, not of those who are at present earning a "bare subsistence wage"; because the employers of these latter will be able to force them to accept a proportionately lower money wage, so as to keep down the real wage to the same bare subsistence level as before. That, at all events, is the general tendency in the long run; it is not asserted that the lowering of wages will follow immediately and in every case upon the cheapening of food.

I repeat that I do not find very much to quarrel with in this diagnosis, as expounded in "The Industrial System," though I suspect that the strength of the tendency of machine industry to favour the capitalist at the expense of the wage-earner is considerably overestimated. Insufficient account is taken of the various counteracting tendencies actually in operation, and proof is altogether lacking that either inequality or injustice in the distribution of wealth has been increasing rather than decreasing in this country during the last half-century. And I dissent entirely from the sweeping assertion in Mr. Hobson's latest work that "riches can only come in one of two ways: either by 'sweating,' 'grinding the faces of the poor,' in buying their labour cheap or selling goods to them dear; or by converting to his

private use and profit, property which is needed for the support and enrichment of the common life of society " ("The Crisis of Liberalism," p. 175). But the real controversy is as to the direction in which improvement is to be looked for, to arrest the downward or to accelerate the upward movement, as the case may be. Mr. Hobson's prescription is increased State activity, with a more clearly avowed purpose of effecting a better distribution of wealth in the three forms of—

(1) State regulation of industry.

(2) State operation of industry.

(3) Taxation in order to raise revenue for public consumption—that is, for the gratuitous provision of such things as all can use and enjoy in common.

Under the first head comes the strengthening of such measures as the Factories and Workshops Acts, Workmen's Compensation Acts, Eight Hours Acts, and so forth; the general effect of which, whether so intended or not, must, he considers, be to shift the balance of distribution in favour of labour. But he appears also to contemplate the direct enforcement of a minimum wage.

He anticipates that the increased stringency of regulation will accelerate the process, already favoured by the conditions of modern industry, of concentrating capital in ever fewer and larger associations, more and more able to defy outside competition and to impose their own terms upon labour. He considers that when this stage has been reached by any industry, it is ripe for being taken over by the State; the fact of the large scale of the business having been found conducive to success being evidence of its suitability for State management, and the cessation of competition being evidence of surplus profits, which in his view would be monopoly profits, and as such illegitimate. It is pointed out that these profits may be "socialised" in any or all of three ways. The State may continue to charge monopoly prices, and may use monopoly profits to pay high wages

of efficiency, or otherwise to improve the conditions of the workers in the industry ; or it may lower prices, and so let the surplus pass to the consumers ; or it may retain the surplus as public income for general public purposes. The choice among these alternatives will depend upon circumstances. And then, thirdly, inasmuch as it is not proposed to carry this process of absorption nearly far enough to make the State the sole owner of all the factors of production and the sole employer of labour, there is still room for a system of taxation ;¹ and it is in fact on a re-adjustment of taxation that Mr. Hobson chiefly relies for "socialising surplus profits." His views on this subject have already been explained in Chapter XII. of this work, and I may repeat that, as applied to the raising of strictly necessary revenue, they would have my hearty assent. To do directly what natural economic laws would do slowly, indirectly, and at the cost of much avoidable suffering ; to lay every tax by preference in the first instance in the quarter whence it can least easily be passed on, and where it is least likely to have the effect of discouraging any useful labour of hand or brain,² is surely a most reasonable policy. An income tax with total exemption below a certain level, and graduated with increasing steepness above that level ; taxes on luxuries, especially on those of the rich, but also on those of the poor that are really luxuries, such as intoxicants and tobacco ; such measures as these, partially embodied in the Budget of 1909, are as fully in accord with our principles as with those of Mr.

¹ It is anticipated that every improvement in the arts of consumption, every new development of individual taste, to which the routine of machine industry is not adapted, will increase the demand for hand industry in one direction as much as it is contracted in the other.

² Thus, "Mr. Rockefeller could not advantageously resist a tax upon his income by raising the price of oil, nor can De Beers raise the price of diamonds as a means of meeting the new taxation put upon the profits of their monopoly" ("Industrial System," p. 222).

Hobson. As regards death duties and taxes on unearned increments of site values, my disagreement with him is mainly a matter of nomenclature. I mean that, supposing the laws of property to be remodelled according to our principles, a large part of the estates of deceased persons would become public property by escheat, not by taxation, and site values would be restored, with due compensation for the private interests affected, to that public ownership from which they should never have been allowed to escape. None of these measures would in our view amount to "using taxation for the purpose of redressing inequalities of wealth,"—except in the sense of reforming unjust arrangements whereby the natural inequalities have hitherto been artificially aggravated. Our disagreements with this writer, and with the school to which he belongs, relate partly to the limits of State regulation, partly to what he calls State operation of industries, but most of all to the objects of national and municipal expenditure. We hold that while in some few matters the modern State does not completely fill its proper sphere, ought to do more and spend more than at present, in many other matters it is attempting too much, and travelling quite outside its legitimate province.

To inquire what the State can do and ought to do for the prevention of destitution or unemployment, or any other evil incident to the existing industrial system, is from our point of view equivalent to inquiring how far these evils can be traced to unredressed human injustice, or to some abuse of the powers vested in the State for the purpose of preventing injustice, or to mismanagement by the State of that naturally ownerless wealth which it holds in trust for the community. For evils not falling under any of these heads, the remedy must be looked for elsewhere than in political action.

Approaching the subject from this side, we must insist in the first place that in order to give the competitive

industrial system a fair chance we need great improvements, involving considerably increased expenditure, under the head of Law and Justice, in the various directions indicated in Chapter XII.

We need also—not State management but—State ownership of land, in order that the various rights of occupation and user suitable for cultivation, mining, building, and other industries may be leased from time to time to those able to turn each natural resource to the best account, and therefore to pay the highest ground-rent to the community.

We need steadier legal pressure than is at present exercised on poor parents, compelling them either to find the means of providing a decent minimum of maintenance and training for their children, or else to surrender them out and out to the authorities, to be brought up as State debtors, and to be utilised to the utmost as public assets. But when he has once secured by such methods a fair field and an adequate stimulus for honest industry, the most pressing tasks of the reformer will be negative or liberative : to repeal many worse than useless regulations ; to abolish all State monopolies, such as that of the Post Office, and all private monopolies fostered by the State, such as that of the liquor traffic ; to relieve the national and local budgets of the greater part of the present enormous and mischievous expenditure on education, and of a very considerable part of the present expenditure on direct public assistance to the indigent ; to utilise the economies thus effected in the first instance by providing for the new expenditure above recommended, next by reducing our national and municipal debts and improving our credit, and lastly by carrying forward the policy of free trade in a larger sense than that of the orthodox economists. We should no longer be content with the old formula, “ No import duties except for revenue,” but should aim at getting rid of indirect taxation altogether,

excepting perhaps a few duties on foreign luxuries. If we can once reach the point of providing for the thorough efficiency of the essential departments of government out of land revenue and escheat, profits of State-managed industries, and taxes hitting only unproductive surpluses, we may expect to see thenceforth a steady improvement in the efficiency of labour, in fertility of invention, in equity of distribution, and consequently in the well-being of all classes.

If I am asked what kinds of State regulation of industry I object to, my answer will be, broadly speaking, all regulations for adults which do not allow "contracting out." That there should be implied in every contract of labour, *in the absence of agreement to the contrary*, some reasonable provision for the health and safety of the workers, is right enough ; and it is doubtless convenient in many cases that the Legislature should define in some detail the sanitary and protective arrangements required. But it seems equally clear that a grown-up person of either sex should be free to waive any such implied conditions, and to take any risks that he or she may think fit, so long as no injury to third parties is involved. Injury to third parties may be said to be involved where a married woman contracts for tasks that will interfere with her primary duty to her children, and in this way female labour may no doubt be very considerably, and quite properly, restricted. And, of course, no individual "contracting out" can be allowed to interfere with regulations intended to protect the general public, as well as the workers, against the spread of disease.

It was pointed out in Chapter IX. that the danger of the liberty of contracting out being converted into an engine of oppression by unscrupulous employers putting pressure on their workmen to sign imprudent contracts, on which so much stress is wont to be laid, and not altogether unreasonably, as things now are, would be

almost entirely removed if the latter had prompt and gratuitous access to impartial courts of law in every case of dispute.

State operation of industry was discussed in Chapter III., and was held to be allowable in three cases only.

First, where the commodity or service required is a necessary adjunct to some necessary function of the State, and private enterprise is proved to be inadequate for the supply thereof. The various industries carried on in our national dockyards and arsenals may or may not come under this head.

Secondly, where in any particular business the general disadvantages of State management are so far neutralised by some exceptional advantage depending on the larger scale of its operations, or on its superior credit, that it may hope to hold its own in fair competition with private enterprise. But in order that the competition may be really fair, not only must there be no such actual monopoly as that now claimed by the Post Office, but care must be taken lest the real burden on the taxpayer (or ratepayer) be concealed by spreading the repayment of borrowed capital over an unduly long period. Thirdly, I admitted, following J. S. Mill, that such undertakings as the lighting of a town with gas or supplying it with water, which cannot be carried out at all without special permission to interfere with the public streets, and cannot therefore without extreme public inconvenience be duplicated within the same local area, must necessarily be either public or private State-conferred monopolies, and that there is a good deal to be said for the former alternative.¹ But I must repeat my protest against extending this reasonable policy, by an utterly false analogy, to justify nationalisation or municipalisation of a business merely because some one company, or combination of companies,

¹ For the *pros* and *cons* as between municipal trading and strictly regulated concessions to private companies, see Darwin on "Municipal Trading" (1903).

has for the time being established a *de facto* monopoly by outclassing or underselling all competitors. From the point of view of the consumer's interest, potential is as good as actual competition, so long as there is no monopoly based on privileges conferred by the State. If the so-called monopolists presume on their fairly-won ascendancy to slacken their efforts, or to charge exorbitantly, it will probably not be very long before competition revives, or in the last resort, if the public need is urgent, a threat on the part of the State itself to enter the field, not as monopolist but as competitor, can hardly fail to produce the desired effect. On the other hand, if the whole industry is taken over by the State as a monopoly, the only possible check on mismanagement is political agitation. And here we touch what is perhaps the weakest point of all in the Collectivist armour.

The utmost that can be accomplished by political agitation is to turn one Government out and put in another, pledged to the particular reform demanded by the agitators. The more questions are put in issue at election-time, and discussed in the national assembly, the smaller is the chance of any particular abuse being attended to and rectified ; especially if, as will almost certainly be the case, the number of voters holding posts under Government is proportionately increased. When we have learnt from Mr. Hobson, Mr. Chiozza Money, Mr. H. G. Wells, and others, the worst that can be said of the demoralising tendencies of trade competition, we have to set against this what historians have to tell us of the past, and our newspapers of the present, amenities of political competition. Insufficient attention to this side of the question is characteristic of this whole school of thinkers. They habitually apply their eye to the small end of the telescope for one set of mischiefs, but to the large end for the other set. In describing the industrial system the tacit assumption is usually made that all the parties concerned act from purely economic motives,

and use to the full every advantage in bargaining that their position gives them. When State action is in question, the general tendency is to make the contrary assumption, namely, that every one concerned, from the King and Prime Minister down to the humblest elector, will act in his political capacity from purely patriotic and social motives. Neither assumption is in accordance with fact. As regards the first, it is, of course, true that, however unselfish and philanthropic a man may be at heart, he does not engage in trade as an exercise in philanthropy, but in order to make money. He wants to support himself and family honestly to begin with, and in the next place to have the means of giving to the people in whom, or the objects in which, he is specially interested. Those whom he meets in business as employers or employees, vendors or customers, are not ordinarily those for whose sake he gets up early and goes to bed late. The fact that he and they are so situated as to make an exchange mutually convenient does not give to either any peculiar moral claim on the benevolence of the other. According to no reasonable standard of ethics have they any right to expect from each other anything more than fair dealing, unless any other tie happens to be formed between them. Yet out of business acquaintance, as out of any other human contact, closer intimacies will from time to time arise, and will be found to modify appreciably the rigour of the game. Moreover, whatever anti-social influences may be incidental to the life of the trader, his main business is after all to study the tastes of his customers and see how he can meet them, just as the main business of the workman is to give satisfaction to his employer, and of the surgeon to cure his patient ; and this, so far as it goes, must be an eminently humanising influence.¹

¹ The play of these motives is traced exhaustively, and with profuse illustrations, by Mr. P. H. Wicksteed in his "Common Sense of Political Economy."

Doubtless much more might be done than is done at present to keep commercial competition within the limits of what is fair and friendly.

As regards the second assumption, it is not in the least necessary to form any unduly cynical estimate of human nature in order to demonstrate its baselessness. Be the estimate low or high, we have only to ask ourselves what evil propensity is likely to be weakened, what good disposition strengthened, when the State is the sole or principal capitalist, and the sole or principal employer of labour?

Among workers of all kinds the competition will be as keen as now for the employments that promise the maximum of reward for the minimum of effort. But success in that competition will depend to an increasing extent on attracting the notice and approval of the dispensers of State patronage. Will these be more just and discerning than the customer on the one hand, and the great captain of industry on the other hand, under the system of commercial competition? To determine this question we must examine the process by which they find themselves installed in the seat of judgment. For the sake of simplicity we will assume that the political constitution only differs from our own in being more consistently democratic. Let us take as our starting-point the two General Elections of 1910, and imagine, if we choose, plural voting abolished, inequalities of electoral districts rectified, adult suffrage, triennial elections, payment of members, and either no Second Chamber or an elective one. These reforms (which by the way Collectivists seem by no means unanimous in desiring, and certainly not inclined to make a condition precedent for the enlargement of State functions) will doubtless produce a government more nearly in accord with the sentiments of the numerical majority, but will do nothing to mitigate the keenness of the electoral conflict, which must, on the contrary, be intensified by

every addition to the magnitude of the interests at stake.

I do not know how far the opinion of onlookers as to the temper in which these last two contests were waged is fairly represented by *Punch's* picture of "Truth in the Poisoned Well," but that journal is not wont to be very far wide of the mark. One often hears the remark, "I hate politics," from persons nowise deficient either in benevolence or in public spirit, and who mean by it merely that they have learnt to associate electioneering with mendacity and uncharitableness. Again, if one ventures to suggest annual or triennial general elections as a better safeguard than any conceivable Second Chamber against arbitrary deviations from the policy which the electors had been led to expect, the usual reply is that a more frequent recurrence of such disturbing events would render life intolerable. Why so, if the exercise of civic functions is so essentially ennobling? I do not wish to be understood as agreeing with such objectors. I do not think that an increase in the frequency of general elections would at all necessarily imply an increase in the number of contested elections, nor that an increase in the number of contested elections would be at all incompatible with a positive diminution in the aggregate expense and inconvenience. But I do say that this widespread dislike on the part of quiet, well-disposed people for the normal manifestations of political strife, in the very mildest form that it has yet been able to assume in any country, is something to set against the fashionable Ruskinese denunciations of the tricks of trade, and "cut-throat competition."

Those who wish to know how much uglier party politics can be made to look, even in an English-speaking community, otherwise fully on a level with our own, should consult the second volume (dealing with politics in the United States of America) of Ostrogorski, "La

Democratie et l'organisation des partis politiques." ¹ Some observers of Canadian politics give one the impression that things are not much better there, allowing for the smaller scale of both good and evil in an imperfectly sovereign State. But at least one incident of our General Election of 1910 should make us pause before stigmatising as peculiarly Transatlantic the habit of treating politics as a matter of *quid pro quo* between the Government and the locality,—so much public money to be granted for railways, bridges, or what not, in return for so much political support to the party in power.

There appeared in *The Times* of 24th February 1910 a letter from a defeated Unionist, complaining that the supporters of his successful opponent had circulated a leaflet on the eve of the polling, belittling his claim to have benefited the constituency during the tenure of his seat by obtaining from the late Unionist Government the cancelling of a debt due from the borough to the Treasury on account of advances for harbour improvements, a new loan of £70,000, and a free grant of £20,000 for further improvements. The points insisted on in that leaflet were : (1) that he ought to have got much more out of the Government in return for his political support, and that the Liberal member of a neighbouring constituency had in fact got more out of his party when they were in power ; and (2) that the probable result of this election would be to keep the Liberals in office, and, that being so, the only chance of obtaining the money necessary to complete the harbour works would be to return a Liberal member. " Let us, as patriotic citizens, consult the interests of the town, and return a Liberal member who can and will help us with the Liberal Government." How much truth there may have been, either in the late Unionist member's claim that he

¹ Paris, 1903 ; English translation, 1902. For equally telling illustrations of the same tendency in French politics, see Le Roy Beaulieu, "*L'État Moderne*," 3rd ed., 1900, p. 166, etc.

had obtained preferential treatment for his constituents when his party was in power, or in the counter-assertion that the only chance of obtaining similar favours from a Liberal Government was to elect a Liberal member, it is not our business to inquire. But it is clear that every Ministry in turn is liable to constant pressure and temptation of this kind, and that the strain on the consciences of voters, members, and ministers must be intensified with every enlargement of the range of governmental activity. Nobody doubts that an election at Woolwich or Portsmouth will turn largely on the discharge or taking on of men at the arsenal or the dockyard. How will it be when (let us say) half the voters in half the constituencies are connected with one or other of the great industries taken over by the Government in accordance with Mr. Hobson's views ?

Our principal civil services are at present fairly well guarded against jobbery by the system of admission by competitive examination, promotion by seniority, and protection against arbitrary dismissal ; the price paid for these safeguards being a tendency towards a dead level of respectable mediocrity. The price will be heavier, and the safeguards weaker, when the attempt is made to work by this system mines, ironworks, cotton mills, and all the other great industries, and to show a profit in the face of foreign competition. Yet the alternative is a system of promotion by merit, which is apt to mean in practice promotion by family and political interest. To keep favouritism out of a system which entrusts to the party for the time being in power the management of all the principal industries of the country may conceivably be found possible in some more fully socialised community than that in which our lot is now cast ; but if, ^{and} when, that great moral improvement has been effected, there will be still less difficulty in eliminating all that is sordid and anti-social from the field of commercial competition.

We are sometimes assured that there is more nepotism among directors of large joint-stock companies than in either governmental departments or municipal bodies, and it may possibly be true. But the cases are not parallel. No one is obliged to take shares in a joint-stock company, and if people choose to do so without satisfying themselves that the management is honest and capable, they have only themselves to blame. Nor, when they have found out their mistake, are they confined to the difficult and uncertain remedy of agitating in conjunction with other shareholders for a reform in the management. Confidence in the prosperity of an undertaking does not rise or fall in all minds simultaneously ; and those whose confidence is on the decline can generally sell to some one whose view is more sanguine. Very different is the position of the citizen whose money is taken from him in taxes or rates. He may have done his best by the use of his single vote to keep out of office the legislators or councillors who imposed this burden upon him ; but he has to pay all the same, he cannot sell out of the concern, and his only hope of redress—a forlorn hope indeed—is to join some party organisation for putting another set of men in office, who may perhaps tread on somebody else's toes instead of his. The remedy of secession—except in the extreme form of emigration—is denied him.

Oh ! but there is the public press, always ready to turn its searchlight on any real or suspected abuse. True, but the public press can, and does, expose with equal vigour the misdoings of companies and individual traders ; that weight, therefore, has to be put in both scales, leaving the balance as before—so long as the press remains free as at present. The independence of the press, however, depends upon conditions which every advance in the Collectivist direction must tend to weaken.

It is an ungrateful task to expose the seamy side of

our public life, which is, I verily believe, in a healthier state now than at any previous period of our history, and compares favourably with that of most, if not all, modern nations. But the persistent and exaggerated denunciations of the uglier aspects of commerce and industry, always with the implication that this or that business would be better managed by the State, leave us no choice. If it is the fact, as I believe it to be, that for every evil consequence traceable to free industrial competition something similar, but worse, may be laid to the charge of State management even within its present comparatively modest domain, it is for the public good that the fact should be proclaimed with all necessary emphasis and iteration.

There can be no question as to the high qualities, both moral and intellectual, of a large proportion of our public men. The paradox of politics is that in that field men of great and varied talents are brought together under such conditions that they are of necessity largely occupied in getting in each other's way and neutralising each other's efforts, so that the collective output is apt to be inferior in quantity and quality to what any one of them could have accomplished if the supreme direction had been confided to him. It is idle to complain of this, or to suppose that there is any radical cure for it short of such an improvement in human relations as will render it possible to dispense with government altogether. Politicians meet in Parliament for the express purpose of championing conflicting passions and interests, and if we arrive through their agency, without civil war, at some not grossly unjust settlement of the most urgent disputes, and at some adequate provision for holding our own in warlike or diplomatic contentions with similarly constituted bodies abroad, we must be content. It is only when we are so unreasonable as to expect from such bodies the same unity of purpose, the same resourcefulness and

flexibility, and the same success in constructive work, as are found in the best managed commercial enterprises, that we are doomed to be disappointed.

Note to Chapter XIV.—This chapter was written before I had had the advantage of reading Mr. Hobson's "Crisis of Liberalism" (1909). I am gratified to observe that he frankly admits the danger to honest administration that would result from increasing the proportion of electors who are employees of the Government from the present $2\frac{1}{2}$ per cent. to 20, 30, or 40 per cent. He rightly rules out, as a remedy worse than the disease, the suggestion that the danger should be obviated by disfranchising all servants of the State; but he thinks that the case might be met by improvements in the machinery of democracy. His particular specific is proportional representation; a very desirable reform, but surely not such as to make all the difference between purity and corruption under a socialistic régime. The danger which he has chiefly in his mind is that of—

"an organisation of the public services using the public as their milch cow." . . . "Well-organised unions of miners, railway workers, postal employees, etc., would, when they got practice, use the party machine to get far better wages, and far softer jobs, than fall to the body of outside employees; and such capitalistic interests as survived would buy their support for their own political designs through the party bosses."

But proportional representation would have no tendency to abolish the party machinery; it would merely necessitate certain changes in the method of wirepulling. All that is claimed for it is that it will enable those local minorities, which at present count for nothing in the composition of Parliament, to combine with minorities elsewhere belonging to the same party or group, so that the relative strength of parties, or groups, inside the House will correspond more closely than at present to their relative strength in the whole electorate. This would be on general grounds a decided improvement, but it would rather facilitate than impede the formation of groups for the furtherance of special interests, and the party whip would be no less tempted than he is now to purchase the support of these groups by concessions at the expense of the taxpayer. An even graver danger, which Mr. Hobson does not notice, is that the Government employees, failing to organise themselves in the manner above suggested, and perhaps being debarred from corporate action by the conditions of their employment, would become as isolated individuals more or less plastic instruments in the hands of the Government for the time being, partly through fear of dismissal or eagerness for promotion, and partly from the mere habit of subordination. It is commonly reported

that this tendency is very marked in France under a system of manhood suffrage, and I fail to see how it could be counteracted by proportional representation.

Be that as it may, I am glad to take note of Mr. Hobson's admission (p. 156), that "there is no other way of making Socialism safe than by making democracy real"; and coupling this with his previous admission that it is very far from being real at present either in this country or in America, I feel justified in asking whether it would not be wise to suspend all agitation for further enlargement of State functions until this acknowledged *sine qua non* has been secured. I will gladly join hands with him in striving to make democracy real, leaving it to the future to determine whether real democracy does or does not tend to be socialistic.

CHAPTER XV.

ANTI-SOCIALIST THEORIES AND THINKERS.

THE "INDIVIDUALISM" OF HERBERT SPENCER.

THE fact that the views advocated in this work will be recognised as very largely Spencerian, renders it desirable to indicate at this stage precisely where and why they diverge. With his formula of Justice, as stated and explained in his "Principles of Ethics," part iv. chap. vi.,¹ I have no fault to find; the differences all turn on the mode of its application to particular cases.

I. LAND NATIONALISATION.

Accepting the demonstration in "Social Statics" (published long before Henry George was heard of) of the theoretically indefeasible universal right to the use of the earth, I have not been convinced by the argumentation in his later works against land nationalisation as a practical policy.

He first sets himself to refute, rather superfluously, an imaginary proposal that the land of England should be restored to the unknown representatives of the unknown original occupants of the soil. If any land-nationaliser rests his case on a "tacit assumption" that those who now own lands are the posterity of the usurpers, and that

¹ "Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man."

those who now have no lands are the posterity of those whose lands were usurped, it may be profitable to him to read Spencer's refutations; but I never myself met with a thinker of that type. The claim really made for the State is that it is the natural and only possible trustee of ownerless wealth, and that the prairie value of land, as distinct from human improvements, is and must always remain, from the point of view of strict justice, ownerless. This was Spencer's own original contention, against which he now urges (1) that this prairie value is exceedingly trifling as compared with the added value attributable to the labours of successive occupants, and (2) that the existing landowners have a heavy counter-claim in respect of some five hundred millions paid in poor-rates since the passing of the Act of Elizabeth. To the first part of this argument it may be replied that in this "prairie value" must be included for the present purpose all the added value due to causes other than the skill and industry of the proprietors. Even if in imagination we bring back the actual surface of the Duke of Westminster's London estate to the condition of marsh and forest in which it may have been seen by Julius Cæsar or Aulus Plautius, we are not justified in imagining all other circumstances to be as in 55 B.C. or 43 A.D. The pressure of population in these islands, the world-wide commerce connected with the estuary of the Thames, the accumulated capital ready to be invested in building or farming operations, above all the security afforded by a civilised government, would render an acre of land anywhere within the four-mile radius enormously more valuable now than then, even if some great convulsion of Nature were suddenly to level the buildings, burst up the sewers, and convert the whole surface into a quagmire choked with rubbish. To all this enhanced value, whether we regard it as actually earned by the State, or as a scarcity value earned by nobody in particular, the existing proprietors

have no moral claim except on the ground of express bargain between them and the State ; and as to that, most people will agree that there must be some limit to the obligation of posterity to honour the drafts of their ancestors, however difficult it may be to define precisely the circumstances which render repudiation just and expedient. Assuming the continuance of the social progress now visibly going on in these islands, Spencer's estimate, that a just measure of land nationalisation would be financially a losing transaction, seems as unduly pessimistic as Henry George's anticipations of a surplus available for the extinction of poverty are extravagantly over-sanguine.

Spencer's last objection is the familiar one that State management of land would be less efficient than that of private owners, because the connection would be less direct between effort and benefit. That is true, supposing the land to be directly administered by paid officials ; and I am far from affirming that the land-development scheme connected with the Budget of 1909 may not involve some danger of that sort. But no such objection would apply to the mere exercise of State ownership on a routine system of leases, long or short according to the purpose for which the land is to be used, but always securing to the outgoing tenant the full value of all his improvements, and always securing to the State, through periodical opportunities for enhancement of the ground-rent, the full benefit of enhanced value due to other causes, such as pressure of population, or increase of purchasing power in the community generally. On the other hand, if and so far as the necessity for ordinary taxation is relieved by this new financial resource, the " vices of officialism," as exemplified by a great army of tax-collectors, will be diminished.

As for the notion of the landlords setting up a counter-claim in respect of all the poor-rates paid by them or their predecessors during the last three hundred years, it

is sufficient to refer back to what was said on the subject of poor-relief in our second chapter, namely, that some measure of relief to starving men, who can neither obtain employment nor charitable assistance, and who are willing to surrender their liberty, is an almost indispensable adjunct to the administration of justice and the protection of property. The controversialist would be bold indeed who should assert that the land-owners were paying an undue proportion of the general taxation during all those centuries when they were almost the only class represented in Parliament. Moreover, the poor-rate was at no time assessed specially on the prairie value of the land, which is what it is proposed to nationalise, but quite as much on buildings and improvements, which the present question does not touch.

II. THE CONSTITUTION OF THE STATE.

In the first chapter of this work certain reasons were set forth for approving the nearest approach to an un-mixed democracy, based on universal suffrage, that is capable of being made a reality under the given social conditions. Here again we find Spencer retreating in his later work from the position taken up in "Social Statics," and here again the reasons assigned for his change of opinion appear to the present writer insufficient.

The first of the three chapters in which this subject is discussed (part iv. chap. xxii. of the "Principles of Ethics") is significantly entitled "Political Rights—*so-called*." It is asserted that

"rights '*truly so called*' are but so many separate parts of a man's general freedom to pursue the objects of life, with such limitations only as result from the presence of other men who have similarly to pursue such objects." . . . "If the integrity of his body is in no way or degree interfered with; if there is no impediment to his motion and locomotion; if his ownership of all that he has earned or otherwise acquired is fully respected; if he may give or bequeath as he pleases, occupy himself in what way he

likes, make a contract or exchange with whomsoever he wills, hold any opinions and express them in speech or print, etc. etc.,—nothing remains for him to demand in the name of rights, as properly understood. Any other claims he may have must be of a different kind, cannot be classed as rights." . . . "Such parts of the social arrangements as make up what we call government are instrumental to the maintenance of rights, here in great measure and there in small measure; but in whatever measure they are simply instrumental, and whatever they have in them which may be called right, must be so called only in virtue of their efficiency in maintaining rights." . . . "The giving of a vote, considered in itself, in no way furthers the voter's life, as does the exercise of those various liberties we properly call rights. All we can say is that the possession of the franchise by each citizen gives the citizens in general powers of checking trespasses upon their rights; powers which they may or may not use to good purpose."

Exactly so; but may not the same be said of the right of free locomotion? The possessor thereof may or may not actually use it in furtherance of the objects of life. The point overlooked in the above passage is that the distinction between primary and instrumental is in this connection essentially one of degree. On the author's own showing, the right to equal freedom is only a natural right in the sense that it is normally instrumental to the healthy development of individual life in the associated State. The vote is in like manner normally instrumental to the object of securing due attention on the part of lawmakers and administrators to the safeguarding of the rights of the voter. If the one right is properly described as natural, so is the other.

Then we are told that "with a universal distribution of votes the larger class will inevitably profit at the expense of the smaller class." The implication is that the less efficient and capable are the majority, and that these, in pursuit of their own immediate class interest, will legislate so as to deprive the more efficient workers of the legitimate reward of their superiority so as to eke out their own inferior earnings. The fallacy here is surely very obvious.

Wealth, virtue, intelligence, and so forth are all comparative terms, and it depends entirely on the point at which you choose to draw the line in an ascending scale whether the superiors or the inferiors in these respects constitute the majority. Compared with a Carnegie or a Harriman, your thousand-a-year man is a pauper ; compared with the Northumberland miner on thirty shillings a week, he is a Cræsus ; and this last looks down on the casual loafer as belonging to a wholly different social stratum. That all those below a certain " poverty line " should combine their votes in order to despoil those above that line would be only conceivable if that line happened to coincide with some permanent colour-line or external badge of caste, and if we could conceive such a caste-line co-existing for one moment with a constitution based on universal suffrage. A superior minority, say of whites among blacks, strongly welded together by caste feeling, may maintain for a long time a privileged position, and the legislation of such a minority will naturally be " class legislation " ; but when once they have consented to recognise the equal political rights of their inferiors, there is no longer in any quarter any adequate motive for class legislation. It is the essence of a class to be distinctive ; and the majority of the whole adult population of a country cannot in the nature of things constitute a class. They may be tempted to legislate against some unpopular class, and if the unpopularity is deserved they may be quite right in so doing, in the sense of taking away unjust privileges and ill-gotten gains. Undeserved odium, and consequent ill-treatment, may be the fate of any one in any community. But to me at least no motive is discernible which would prompt a majority to legislate knowingly against the natural association of superior reward with superior ability. Nor does the experience which seemed to Spencer to point that way, or the course of legislation since he wrote, really require any such explanation.

It is unfortunately as true now as when he wrote in 1893, that

“year after year, more public agencies are established to give what seem gratis benefits at the expense of those who pay taxes, local and general.”

But it is not true that

“the mass of the people, receiving the benefits, and relieved of the cost of maintaining the public agencies, advocate the multiplication of them.”

Broadly speaking, the pressure in this direction has come much more from above than from below: the new public agencies have been quite as much for the benefit of the well-to-do as for that of the poor; nor have the poor, if by that is meant the poorer half of the nation, been by any means relieved of the cost.

The most conspicuous and costly of the public agencies referred to is that of State education; let us examine its history.

The Education Act of 1870 followed close upon the first rather meagre instalment of the political enfranchisement of the proletariat as distinguished from the middle class. There were no “labour members” at that time, and the prevailing idea among the legislators responsible for the measure was undoubtedly, as has been already remarked, “We must educate our masters.” The intention was, not to confer gratuitous benefits on the poor at the expense of the rich, but to guard the interests of the legislators themselves, the hitherto privileged and governing classes, against the dangers vaguely apprehended from the ignorance and impulsiveness of the growing democracy. They foresaw that the Act of 1867 would not be the last word on parliamentary reform, that in another ten or twenty years the labour vote would be a much more serious factor, and they were anxious that the rising generation should be a little less at the mercy of unscrupulous demagogues

than their fathers were believed to be. They did not at first mean it to be gratuitous, but they did aim at rendering it as soon as possible compulsory, and only when the conclusion was forced upon them that compulsion was impracticable unless the education was to be free, was the latter point conceded. If all the voters who were weekly wage-earners, or if all the voters whose incomes were below, say, £100 a year, had been at any time the dominant factor in parliamentary elections, and if they had habitually thought of themselves as a class, and concentrated their voting power on the furtherance of their common interests as such, depend upon it the cry would have been for something very different from the present system of national education. If they had demanded anything for their children at the expense of the rest of the community, it would have been free feeding and free clothing in the first instance, possibly free teaching afterwards, but almost certainly not the sort of teaching now offered. We might have witnessed blunders equally gross of a different kind, but assuredly it would not have taken us over thirty years to discover that a hungry child, or an overworked child, is not a fit subject for school instruction.

Since Herbert Spencer wrote, the total public expenditure on education, national and local, has greatly increased, but also an increasing proportion of it goes to objects other than the elementary education of the poor. Lord Sheffield, in a paper read at the National Liberal Club in November 1909, reckoned the public income now available for higher and special education (exclusive of scholars' fees) at over eight and a half millions, and demanded another half-million as necessary to do the thing properly. Surely the pressure in favour of this sort of expenditure cannot be supposed to come wholly or chiefly from the poorer half of the electors ; or if it does, it is no proof of eagerness on their

part to secure gratis benefits for themselves at the expense of the rich, but rather the reverse.

Free public libraries, again, are by no means the kind of boon that the working classes would have spontaneously asked for. The *élite* of them, of course, do make some intelligent use of the institution as it is there, and the casual loafer may drift in to while away the time and to see the racing odds. But the largest readers and borrowers seem to be men and women, especially women, of the middle class. Many urban constituencies have refused to put the Act in force, and many more probably would have done so but for Mr. Carnegie. Socialism itself, both in its most drastic and in its diluted form, is much more academic than democratic, judging by the character and status of its leaders, and the circles in which it chiefly flourishes.

It is rather surprising to find such a thinker as Herbert Spencer adopting the favourite fallacy of the late Lord Beaconsfield, that equity requires not a representation of individuals but a representation of interests. If interests are to be represented in proportion to their importance, by what other test than that of numbers can their importance be measured? How can any one know beforehand what interests are going to be in real or apparent conflict in all future sessions of Parliament, or even in the very next session, unless he knows exactly what measures are going to be brought forward? You may distinguish on paper the capitalist interest, the labour interest, the Catholic and Protestant, Anglican and Nonconformist, Liquor and Temperance, interests; but these are only a few arbitrarily selected lines of demarcation out of an almost infinite number that might be drawn. It is possible that here and there an individual may escape being ticketed with any one of these labels; it is certain that most people display two or more of them at the same time. What, for instance, is the voting value of an Irish Catholic, earning

weekly wages as a brewer's drayman, but personally a teetotaller, who is a member of a Friendly Society and has a few pounds to his credit in a Post Office Savings Bank? And what assurance have you that his vote will not after all be determined by some idiosyncrasy quite unconnected with either liquor, or capital, or labour, or religion? If "representation of interests" means that the electors are to be (as in Prussia) graded according to wealth, that the lines are to be drawn at such points as to make the wealthiest class numerically the smallest, and that then this numerical inferiority is to be compensated by a system of plural voting, this is to prejudge, by the form of its constitution, one of the most important questions which it will be the duty of the State, considered as a justice-enforcing association, to determine, namely, whether the existing distribution of property is just or unjust.

Supposing we were to admit the principle of representing interests instead of persons, it would be difficult to name any class interest so unmistakably separate, so liable to be brought into conflict with its opposite, and so obviously in need of whatever protection the parliamentary franchise is capable of affording, as that of the female sex. Yet here we find Spencer not content with insisting, as on his theory he reasonably might, that the numerical preponderance of women in England rendered it dangerous to give them individually equal voting power with men, but actually denying them, on the flimsiest of pretexts, any voting power at all. He is no doubt fully justified in pointing out, as he does acutely enough, the folly of expecting that the same men who are now complained of for refusing to amend laws which are unjust to women in their private capacities will concede the suffrage when it is claimed for the express purpose of extorting these concessions; but this flaw in feminine logic does not

prove that the masculine attitude is other than selfish and tyrannical on both points.

As to Spencer's concluding observation, that "representation without taxation entails robbery," and that therefore it is essential that every voter, however poor, should be made to contribute something, however small, to the expenses of government, the reader is referred to the concluding section of our first chapter.

III. STATE EDUCATION.

Agreeing generally with the Spencerian principle that the education of children is the business of their parents, not of the State, while that of adults is their own business, we noted in Chapter IV. one very important qualification—if it is not rather a corollary—of this principle, concerning which Spencer is silent, namely, that it is the business of the State to see that this parental duty is properly discharged, to protect every child against both parental tyranny and parental neglect, and in the last resort to assume itself, or delegate to some selected substitute, the guardianship of all derelict children. If we admit in this case his plea that bad parents may be left to the stern discipline of Nature, which will gradually eliminate those families in which the proper upbringing of children is neglected, we may as well abandon altogether the notion of corporate and coercive action for the protection of the weak and the enforcement of justice, and declare for anarchy pure and simple.

IV. NATIONAL AND MUNICIPAL TRADING.

On referring back to the treatment of this subject in Chapter III., it will be seen that two classes of cases are recognised in which it may be proper for the State to engage in manufacturing or commercial business ;

namely, (1) where the only practicable alternative is to give a monopoly to some private individual or company, and (2) where there is reason to think that, owing to some special advantage possessed by the public authority, it will be able to carry on some business—*e.g.* the housing of the poor—without charge or serious risk of future burden to the taxpayer or ratepayer, and without prohibiting unofficial competition. Spencer contents himself with urging in general terms the expediency of minimising the range of State management, and does not, I think, anywhere notice the point that all profit made by State trading reduces the need for compulsory taxation, and that every reduction of taxation involves, generally speaking, besides the direct relief to the citizen, a proportionate reduction in the staff of the revenue department and in the amount of Government patronage. While noting this as a weak point in his argument, I am far from intending to affirm that there are many (if any) forms of legitimate State or municipal trading which are likely to be so managed as to reduce either the burden of taxation or the amount of State patronage. Major Darwin has well shown that in most cases the benefits of State control, and the community's fair share of profit, without the evils and risks of State or municipal management, may be secured by a well-framed system of terminable concessions to private companies.

It will do us no harm to dream of a time when land-rents, and escheats, and other resources which justice would assign to the community rather than to individuals, shall have so much expanded, and when the necessary cost of external and internal defence shall have so much diminished, that taxation properly so called, imposts actually trenching on the lawfully acquired property of individuals, shall cease to be necessary. But according to all present appearances that stage is very much farther off than our Socialist friends are apt to imagine,

and is being pushed farther off than it need be by the sort of influence they are now bringing to bear on our national and municipal finance. Of all the obstacles to the realisation of our dream of a well-ordered, tax-free community, the gravest is the annual compulsory levy of thirty millions to be spent, or mis-spent, on State education, with the continued increase which seems inevitable so long as the present theories of State function retain their popularity.

V. FOREIGN AND COLONIAL POLICY.

Spencer's recommendations under this head are wholly negative. "Never fight unless actually attacked, and on no account use force to bring barbarous tribes under what you are pleased to call civilised control," is the sum and substance of his teaching. No single war or annexation, by this or any other country, seems to meet with his approval. In contrast with this, the view of international policy advocated in this work (Chapter II.) is that it should be actively fraternal towards all other nations which profess the same common purpose of promoting freedom and justice, in so far as their professions are not glaringly belied by their acts; actively hostile where the cause of freedom and justice would suffer seriously by our inaction, even though the aggression, or oppression, might not be immediately directed against ourselves. It was also recognised that cases may and do occur, though not so often as strong and ambitious Powers find it convenient to pretend, when the only effective remedy for tyranny or anarchy is foreign annexation.

With the fundamental Spencerian doctrine, that one chief test of social progress is the increasing predominance of industrial over militant activities, we are in entire agreement. On the other hand, it will be remembered that Spencer's later teaching, as dis-

tinguished from that of "Social Statics," admits fully the necessity and rightness of militancy from the point of view of Relative, though not from that of Absolute Ethics; and here again we agree.¹ The divergence only arises when we come to consider, for the world as it now is, the conditions of a rational compromise between the ethics of enmity and the ethics of amity. Our position is that the distinction between offensive and defensive warfare is not a sound basis of compromise, unless we extend the term "defensive" so as to include intervention in foreign quarrels where the combatant whom we deem to be in the right needs and asks for our assistance, and narrow it so as to exclude national resistance to a foreign invasion provoked by our own injustice, and preventable by concession of reasonable demands. Co-operation all over the world, according to the measure of our strength and opportunities, with all who are striving for what we believe to be justice, is the sufficient, and the only, justification for war and preparation for war; as co-operation for restraint of evil-doers within our own territory is the sufficient, and the only, justification for the maintenance of a police force. Spencer would not perhaps

¹ "For each kind and degree of social evolution determined by external conflict and internal friendship, there is an appropriate compromise between the moral code of enmity and the moral code of amity; not, indeed, a definite, consistent compromise, but a compromise fairly well understood. This compromise, vague, ambiguous, illogical though it may be, is nevertheless for the time being authoritative. For if, as above shown, the welfare of the society must take precedence of the interests of its component individuals, during those stages in which the individuals have to preserve themselves by preserving their society, then such temporary compromise between the two codes of conduct as duly regards external defence, while favouring internal co-operation to the greatest extent practicable, subserves the maintenance of life in the highest degree, and thus gains the ultimate sanction. So that the perplexed and inconsistent moralities of which each society and each age shows us a more or less different one, are severally justified as being approximately the best under the circumstances."—"Principles of Ethics," vol. i. p. 136.

have expressly dissented from this general statement, but his comments on concrete examples, such as the British conquest of India, are sometimes hard to reconcile with an adequate recognition of its truth. After all allowance made for incidental faults and crimes, the substitution of the rule of the East India Company for that of the decadent Mogul and the rapacious Maratha, and the substitution of direct British rule for that of the East India Company, must surely be counted on the whole as triumphs of industrialism over militarism. A force of 300,000 trained soldiers, of whom only about one-fourth are British, now suffices for the defence and control of a population of three hundred millions. No statistics are available, so far as I know, for the close of the eighteenth century; but it is a pretty safe conjecture that the proportion of fighters by profession under the various native potentates was much nearer 1 per cent. than 1 per thousand. Grievous as is the poverty of modern India, the vastly larger population that contrives somehow to exist proves that far more skill and industry is applied now than formerly to the utilisation of the productive forces of nature. If, instead of denouncing the process by which India was dragged up to its present stage of social progress, Spencer had urged that in consequence of this progress the time was now ripe, or nearly so, for a new departure in direction of national unity and self-government, probably many of his admirers, certainly the present writer, would have heartily assented. Others might as probably dissent, not from any difference of principle, but from a different appreciation of the evidence as to the actual state of the country. But no one in general sympathy with the Spencerian political ethics, or with the view of State functions here advocated, will hesitate to admit that the kind of dominion now exercised by Great Britain over her great Eastern dependency requires exceptional circumstances to justify

it, and should continue no longer than is absolutely necessitated by the political immaturity of the governed. The main ends for which the State exists must always be pursued under heavy disadvantages by the agents of a distant and alien nation. That such an alien rule may nevertheless be at any given moment less imperfect than any form of indigenous rule which could then and there be substituted, is what Spencer ought to have more explicitly recognised.

THE "VOLUNTARYISM" OF AUBERON HERBERT.

It is the common lot of great thinkers to leave behind them disciples who develop their doctrines in such widely different directions as to become mutually antagonistic, and hardly recognisable as branches of the same stem. Herbert Spencer had not been long dead, when a lectureship was founded in his honour at Oxford by an admirer who was a native of India, and who subsequently scandalised beyond measure the loyal and learned body which had unsuspectingly accepted the endowment, by not only demanding the immediate abolition of British rule in India, but openly instigating and applauding the assassination of prominent officials as a suitable method of enforcing the demand. It is needless to point out that only the most insanely perverted logic could deduce such consequences from anything that Spencer ever wrote. That the founder of a "Herbert Spencer Lectureship" should develop into an apostle of murderous Nationalism, can only be quoted as a particularly piquant example of human inconsistency. Far more genuine is the discipleship of the first "Herbert Spencer Lecturer," the late Mr. Auberon Herbert, who commenced his lecture with the remark that "Spencer had spoilt his political life," by making him feel that the game of party politics, as then played in England, was unworthy of an honest man. He had, in fact, withdrawn from politics

while still young, and devoted the rest of his life, and no mean literary and oratorical gifts, in a perfectly unwordly spirit, to the uphill and wholly unremunerative task of trying to convert his countrymen to the political creed to which he himself gave the name prefixed to this chapter. His Oxford lecture, and the paper entitled "A Plea for Voluntaryism," merely summed up what he had been saying for some twenty years past in his own organ, *The Free Life*. Between his Voluntaryism and Spencer's Individualism there is the closest affinity, not however, amounting to identity. Both proclaim the law of equal freedom. Both condemn the use of public force for any other purpose than that of restraining wrongful force and fraud. Both, on the other hand, repudiate Anarchism, either of the violent bomb-throwing, or of the passive Tolstoyan type. Both assume that "the use of force to restrain force" involves the recognition of private property. Both believe in the open market, and are equally opposed to Protection—"whether or not white-washed as Tariff Reform" (Herbert's phrase)—and to Socialism, dubbed by him "Protection made universal." Both are equally vigorous in denouncing aggressive war, conscription, State education, and restrictive liquor legislation. But they differ in the following not unimportant respects :—

1. Herbert's theoretical repudiation of Anarchism is for practical purposes almost nullified by his insisting that all taxation must be voluntary; not in the qualified sense recognised in our Chapter I., and by Spencer in his "Social Statics," of leaving to the individual the option, whatever it may be worth, between refusing to pay his quota and foregoing the benefit of State protection; but in the absolute and wholly impracticable sense of leaving every one free to assess himself at anything or nothing as he pleases without forfeiting thereby his right of access to the public justice-shop. The public revenue is to be collected by no other processes than those employed

by churches and charitable societies. A Government Sunday or Saturday is to be proclaimed ; collecting-boxes to be held by patriotic young ladies at street corners ; bags to be carried round in church after moving sermons ; influentially headed subscription-lists to be circulated, entertainments got up, etc. ; and on the amount thus casually collected must depend the scale on which the national establishments are to be maintained, the strength of the army, navy, and police, the salaries of judges, the civil list of the Sovereign, the faith to be kept, or not kept, with the public creditor.

And with this inadequate view of the financial requirements of a justice-enforcing association goes an equally inadequate display of interest in its practical efficiency. After the reluctant and perfunctory admission that occasions will arise when force must be used to repel force, he turns away from the distasteful subject, leaving others to settle the how, when, and where. Whereas some of Spencer's most vigorous criticisms are directed against the shortcomings of our actual administration of justice, and to the necessity for a more liberal expenditure in order to render the tribunals of first instance accessible on equal terms to poor and rich, I cannot, as a constant reader of *The Free Life*, recall a single constructive recommendation by Mr. Herbert for the better performance by the State of its primary and undisputed functions.

2. His formula, "Force to repel force," is, of course, meant to apply to violent (or fraudulent) misappropriations of property as well as to assaults on the person. But his conception of the property to be protected is neither more nor less than the rights that happen just now to be recognised by the law of England. Property acquired by inheritance or bequest is to him as natural and unquestionable as that acquired by personal labour. What is still more important as differentiating him from Herbert Spencer, he seems to be absolutely untroubled

by doubts as to the abstract rightness of private land-owning. He has no partiality for his own class, and is most amiably disposed towards the proletariat; he would like to see every one a capitalist in a small way, but he believes this object to be attainable by the industry, the thrift, and the voluntary co-operation of the wage-earners themselves, without any legislative change except in the direction of lightening taxation and making competition even more free than it is at present.

3. There is this broad difference between these two Individualist thinkers, that while Spencer approaches political problems, and ethical problems generally, in the scientific spirit, and from the starting-point of biology, Auberon Herbert approaches them as an intuitive moralist, his starting-point being the sentiment of personal dignity and responsibility. His spiritual affinity with the youthful author of "Social Statics" is very close, but the distinction between absolute and relative ethics, which plays so large a part in the mature Spencerian philosophy, seems to have no meaning for him.

As a thinker he is not for one moment to be compared with Spencer, but he has left a bright example to all thinkers and all controversialists by the courage, good temper, courtesy, and utter self-forgetfulness with which he championed for thirty years or more one important, but increasingly unpopular, aspect of the truth.

INDIVIDUALISM ACCORDING TO MR. J. H. LEVY.

So far as I know, the term "Individualist" is borne by only one journal in the English language. That journal is the organ of a small but not inactive Society now known as the "Personal Rights Association." Both the Society and its journal are older than their present names. The Society was an outcome of the long and ultimately successful agitation against that attempt to introduce continental methods of regulating pros-

titution which took shape in the so-called Contagious Diseases Acts, 1866 to 1869. The repeal of those Acts in 1886 set free for separate action two distinct schools of repealers who had all along been conscious of different ulterior aims, based on different theories of State function. For the policy, condemned by both alike, of regulating vice primarily in the interest of the physical health of vicious men, one desired to substitute measures of vigorous suppression directed against men and women alike, while the other was chiefly concerned to protect poor and friendless women from being blackmailed and harassed by the police in the name of public decency, and was for leaving all forms of vice which did not involve force or fraud to be combated by voluntary and non-coercive moral agencies. The zeal of the suppressionists found expression in a "National Vigilance Association" which saw to the enforcement of such measures as the Criminal Law Amendment Act, 1885, while the other section utilised, and gave new significance to, a Society already existing under a name so similar to that of the former body as to render some confusion inevitable if it was retained. To avoid this, the "Vigilance Association for the Defence of Personal Rights, especially in matters relating to Women," which had existed under that name since 1872, became the "Personal Rights Association," its old title surviving only in its motto—"The price of liberty is eternal vigilance." Its organ, successively entitled "The Personal Rights Journal," "Personal Rights" simply, and lastly, "The Individualist," has been conducted for over thirty years by the same able editor, Mr. J. H. Levy, who combines with much humanitarian enthusiasm remarkably clear-cut views on Economics and State functions. It is with the latter that we are here concerned.

"To uphold the perfect equality of all persons before the law," is the formula employed to describe the purpose of his Association; but this tells us little or nothing

about the province of the State, and might be subscribed to quite as readily by a Collectivist as by an Individualist. It harmonises fairly well with the title of the Association, but hardly with the present title of the journal, which is more expressive of the personal standpoint of the editor. The original members were little concerned with such subjects as Free Trade, or Voluntarism in education, or Church Disestablishment, or Land Nationalisation; still less with the various schemes, then only just beginning to be mooted, of which we have since heard so much under the name of "social reform": old age pensions, State insurance against unemployment, the minimum wage, and the eight-hours working day. What drew them together was indignation at what they deemed to be the unequal treatment of women as compared with men, and of the poor as compared with the rich, under the existing laws; and that in relation to personal rather than proprietary freedom. Under the present editorship, however, the outlook of the journal has been widened so as to embrace all, or nearly all, the questions discussed in this work, and they are approached from a point of view which coincides to a large extent, but not entirely, with my own. The following are the most notable differences:—

I. On the land question Mr. Levy is more in accord with the later than with the earlier opinions of Herbert Spencer. Admitting that private ownership of the soil never ought to have been recognised,¹ he appears to see more harm than good in all the various proposals for remedying the original wrong. He is opposed to taxation of land values as unfair to recent purchasers of land, to resumption without full compensation as a breach of the national faith, and to resumption with full compensation as imposing too heavy a burden on

¹ "The defence of individualism *plus* private property in land seems to me impossible" ("The Outcome of Individualism," p. 44).

existing taxpayers. He also maintains the opinion, which I have already given my reasons for rejecting, that any revenue derived by the State from site values, whether called land tax or rent, cannot justly be applied in relief of direct taxation, but should either be divided among the citizens *in specie*, or applied to some generally beneficial purpose other than those for which compulsory taxation would be justified. On the whole, therefore, he is content to recommend, as the first and only immediate step, the formal recognition of universal State trusteeship as the right principle for the future, but not for retrospective application.

“Public lands would not be allowed to slip from public hands; the permanent fiscal burthens on land—which are really a reserved rental belonging to the State—would be jealously maintained; land held in trust by corporations might be transferred to the State on equitable terms; the pruning away of some of the absurdities of the law of inheritance would result in many rich windfalls to the State; reversions, whose market value is little, might advantageously be acquired; and, last not least, I think we might reasonably look forward to bequests and gifts of land and other property to the State becoming much more frequent. Especially I should hope that many of the large landowners would voluntarily turn their permanent ownership into a terminable one; for they would gain far more in the love and esteem of their fellow-citizens than they would lose in point of wealth.”

These remedies seem to me inadequate, and I consider the writer's scruples about the national faith somewhat overstrained. To avoid as far as possible the disappointment of reasonable expectations is no doubt the rule of justice and sound policy; but it is not a reasonable expectation on the part of any landowner that alienations of public land, made long ago by the rulers for the time being, without any thought of the interests of posterity, should be held for ever sacred according to the exact terms of the original grant; still less that they should reap the full advantage of a gradual improvement in the conditions of the tenure, from the limited rights

and onerous obligations of a feudal tenant by knight service, or by free and common socage, to the practically absolute ownership of a modern tenant in fee simple, in consequence of changed views of public policy between the twelfth and seventeenth centuries, without any liability to suffer by subsequent changes in the opposite direction. All that they have a right to expect is that any such changes should be gradual, and that they should be of a nature to reward and encourage rather than to penalise good husbandry. "Repudiation" of this sort seems to me to be not merely not condemned, but positively enjoined by sound morality, as a check on governmental extravagance.¹

2. Mr. Levy's conception of permissible ownership includes an absolute power of bequest,—absolute as regards the property disposable, though not (I think) absolute in the sense of creating entails and other perpetuities,—and also includes devolution by inheritance of the whole property not disposed of by will; though from the passage last quoted we may infer that he would place some limit on the degrees of kinship entitling a person to inherit. From this it follows that in his view any death duties exceeding the cost of administration must be regarded as a form of taxation of capital, just as if they had been levied from the testator or ancestor in his lifetime, and to be approved or condemned on the principles governing taxation in general; whereas in our view they represent the natural lapse or escheat to the community of property which became ownerless by the death of the acquirer, and the matter requiring to be justified by special considerations of public policy

¹ If it is objected that the existing landowners are not identical with those who profited by the successive alterations in our land laws, but represent for the most part subsequent purchasers who paid a price based on the enhanced value, I reply that those purchasers knew, or ought to have known, that laws which had been altered in one direction might be altered again in the reverse direction, and should have considered that risk in making their bargains.

is the retention of a portion of the estate by heirs or legatees.

3. In the sphere of personal as distinguished from proprietary rights Mr. Levy starts like myself from the Spencerian and Kantian principle, that coercion by the State should be carried as far as, and no further than, may be necessary to protect the freedom of every one to do what he likes, so long as he does not interfere with the equal freedom of others. His own way of putting it in a recent leaflet 's that compulsory co-operation is good up to the point at which freedom is maximised, harmful when pushed beyond that point ; and that government can promote happiness only by maintaining the widest liberty, which is the political (as distinguished from the ethical) *summum bonum*. But in applying this principle he habitually weighs in rather different scales from mine the dangers to liberty from the side of the State and from the side of individual aggressors. For instance, while expressing strong disapproval of capital punishment, and of all forms of corporal punishment for either adults or minors, he has never, to my knowledge, proposed any alternative deterrents, or attempted to show how wrong-doers could and should be restrained without punishment.

He strongly supported the movement in favour of a Court of Appeal, but offered no suggestions for obviating the consequent delay and expense ; whereas I was more impressed during the controversy by the latter considerations, and am not even now satisfied that the good done by the new appellate tribunal as actually constituted has not been too dearly bought. I feel, at all events, that it is at best a reform of quite secondary importance as compared with the expediting and cheapening of the procedure of both civil and criminal tribunals. For one innocent person who was convicted and punished before the establishment of the new Court of Criminal Appeal, and who would have been acquitted

by that Court, there must have been hundreds who suffered in person or property from the wrong-doing of others, and who were deterred from attempting to obtain redress by the expense and uncertainty of litigation, or who obtained inadequate redress at a wholly disproportionate cost. It is from reforms in this direction (though inevitably entailing some increase of State expenditure and therefore of State coercion) that I should anticipate the most considerable additions to the *net* total of human freedom. Our agreements and differences in the sphere of public health have been sufficiently indicated in the chapter on that subject: agreement as to compulsory vaccination, partial disagreement as to isolation and notification in infectious cases.

It may strike some people at first sight as rather curious that a "Personal Rights Association" and an "Individualist" journal should give an exceedingly prominent place in their propaganda to the cause of anti-vivisection—that is, to demanding a very large extension of the range of State interference, in the shape of total prohibition of all scientific research taking the form of seriously painful experiments on animals. It could hardly be contended that dogs and cats, or even our nearer relatives the monkeys, were persons. But there certainly was a question, and a very difficult one, of "equality before the law," when it was asked why the man of science should be allowed to torture cats and dogs in the pursuit of knowledge, while the costermonger was fined and imprisoned for overworking his donkey in the struggle to earn a living; and when the vivisector retorted by asking why fox-hunting and battue shooting should be permitted, if he was to be penalised for causing pain in the course of researches for a purpose of undoubted utility; and when all three parties claimed equal liberty with the butcher, with whose services only an insignificant minority was prepared to dispense. It is also true, as has been already pointed

out (Chapter VIII.), that cruelty to animals is a subject on which it is impossible for the State to be neutral. Unless animals have rights of a sort, any interference on the part of humanely disposed individuals with the liberty of their captor to torture them at his pleasure is a violation of the latter's personal right, against which the State would be bound to protect him.

Mr. Levy has not only sided strongly and persistently with the anti-vivisectionists in his editorial capacity, but also offered himself as a witness on behalf of the Association before the Royal Commission on Vivisection. His evidence, partly printed in the *Individualist*, will be not the least interesting feature in that long-delayed Report. He has not convinced me that the policy of total prohibition is the right one, though I feel strongly the necessity for strict regulation of the practice, and the exceptional difficulty of applying to this particular case the general principle suggested by me in Chapter VIII.

SOME FRENCH OPPONENTS OF "ÉTATISME."

Of the very few foreign writers on this subject with whom I am acquainted, M. Le Roy Beaulieu has exposed most methodically and in fullest detail the evil consequences, in France and elsewhere, of the excessive enlargement of the functions of the modern State; but on the two most important subjects of all, religion and education, I cannot help wishing that he had been more thorough in the application of his admirably stated first principles.

As regards religion, after rightly insisting that the State should be secular (*laïque*), but not atheistic; identified with no religious body, but respecting all in so far as they are aiding the cause of social order; he goes out of his way to express disapproval of the separation of Church and State in France, or anywhere

on the Continent of Europe. And similarly with State Education, after vigorously exposing the evils of State monopoly and bureaucratic uniformity in that sphere, he comes back after all to the position so unfortunately taken up by J. S. Mill, that it is the duty of every parent to provide elementary instruction for his children, and that where the parent cannot afford this expense the State must step in and supply the deficiency, without making him a pauper, and without depriving him of his parental rights. I have tried to show in Chapters IV. and V. how this apparently small concession carried with it, logically and practically, the whole enormous expenditure on primary and secondary education to which England now stands committed, and at which Mill himself would have been aghast.

On the State as the organ of justice he is sound so far as he goes, but he does not assign to that function the absolute supremacy over all others that in our view properly belongs to it. In the scheme of his work, justice (*droit*) ranks second among the essential functions of the State, the first being "security," and the third "general conservation"; all three being brought under the general principle that the State exists to provide for all those needs of the inhabitants of a given territory which are "common" (not merely "general")—that is, which cannot be met without common action, or at all events observance of a common rule, positive or negative. The "security" which takes the first place is primarily security against foreign attack or internal rebellion, but also includes protective measures against epidemics and the like. By "general conservation" is meant action on behalf of the permanent interests of the community, in cases where these might otherwise be sacrificed to the immediate convenience of the present generation, as, for instance, in the matter of afforestation.

In our scheme, both the first and the third functions are treated as merely subsidiary to the second. A league for the enforcement of justice must, like every other association, preserve its own existence in order that it may fulfil its purpose; and the enforcement of justice includes the prevention of conduct tending to the spread of disease as being a form of aggression, as soon as science has demonstrated that such is indeed the character of the practice in question.

As for "general conservation," we have shown that the body organised for the purpose of doing justice cannot do its work completely unless it constitutes itself trustee of all ownerless things on behalf of all mankind; and that, in the sense and to the extent there defined, all land, and, in fact, all natural forces, come under this category. The State needs no other justification than this trusteeship for taking all due precautions against exhaustive exploitation of the natural resources of the country by its present occupants to the prejudice of future generations, and even for itself executing such large public works as no commercial company would undertake, where this can be done without favouring one district at the expense of another.

When the learned Professor does come to deal with the State as the organ of justice, I am glad to find myself in agreement with him on the point that its function is not to create rights but to declare them; but I part company with him when he goes on to identify the rights which the State is to declare and enforce with the usages that it may happen to find already prevailing as the result of the countless actions and reactions of daily intercourse. Many existing usages have been established by the strong in their own interest to the injury of the weak; and if the only business of the State is to confirm these instead of uprooting them, it is hard to see what we have to gain by supporting such an "organ of justice." Our author quotes with

approval the dictum of Montesquieu, "Laws, in the largest sense of the term, are the necessary relations derived from the nature of things." This is well enough as a description of the "laws" with which a Newton or a Darwin is concerned, but is quite inapplicable to laws of human enactment, and only partially true of the moral principles on which those laws ought to be based.

The form of the scientific law is, "If you do this or that, the effect will be so-and-so."

The form of the moral law is, "If you do this or that, knowing that the natural effect of your action will be so-and-so, you will be worthy of praise, or of blame, as the case may be."

The State-enacted law says, "Inasmuch as certain acts have certain social mischiefs for their normal consequences, we forbid those acts, and will use the force at our disposal to prevent them."

The scientific law is a statement of causal relations.

The moral law is a judgment of praise or blame.

The enacted law is an expression of will, based on a judgment of praise or blame, concerning hypothetical conduct, the character of which depends on relations of cause and effect.

The Professor's illustrations, drawn from the civil part of the law, are meant to prove that legislators had better confine themselves to imparting greater precision, and greater certainty of fulfilment, to the arrangements which people would in any case spontaneously make for themselves. All that they really prove is (what nobody is likely to dispute) that legislators often make mistakes, both as to what it is desirable, and as to what it is possible, to enforce.

The laws against usury failed, and deserved to fail, because directed against a practice which was really unaggressive, the borrower being as much a free agent as the lender. But the laws abolishing slavery and the

Factory Laws restricting child labour, though strongly opposed to the natural desires of powerful classes who could and would have continued these practices but for State intervention, succeeded and deserved to succeed. Slavery was believed by Aristotle to be "a necessary relation derived from the nature of things"; the event showed that the only real necessity lay in a curable defect of human nature.

Again, our author would have had the law confirm without question titles to property derived from nothing better than first occupancy, on the ground that nobody likes to be ousted from what he has once appropriated; but he fails to perceive that neither does anybody like being shut out from the best camping-ground merely because somebody else has managed to steal a march upon him; and that in the absence of police the resentment of the second comer is quite as likely to take a practical form as that of the first.

He would maintain the succession *ab intestato* of distant relatives, and an unlimited right of bequest, because property owners naturally like to feel that they have a power of disposition extending beyond their own lifetime, without considering whether such an extension is not an unjust encroachment on the rights of the living. On the whole, M. Le Roy Beaulieu fails to supply, what I had hoped to find in his "*L'État Moderne*," a consistent and workable theory of the purpose and limits of State action, though he has done brilliant service in exposing the evil effects of "*Étatisme*" in various departments of the government of his own country.

M. Yves Guyot and the late Admiral Reveillère also deserve mention as publicists who have contended with vigour and eloquence against the tendency (until lately much more pronounced on their side of the Channel than on ours) to over-legislation and over-administration.

CHAPTER XVI.

ORGANISED ANTI-SOCIALISM.

THE reader who has had the patience to follow me thus far will be in no danger of imagining that this book is written in the interest of either of the two great political parties, or in furtherance of any existing propaganda. But as I am a firm believer in the advantage of association whenever there is any clearly defined purpose about which the members are agreed, it may be well to explain why none of the various leagues which have actually been formed in the course of the last thirty years with the avowed object of checking over-legislation, and especially Socialistic legislation, seem to me to supply even approximately the sort of rallying-point that is required.

The Personal Rights Association does not, according to its official formula, come within this category at all; and, moreover, it has been for a long time past so completely identified with the personality of its editor and manager that in discussing him I have said all that needs to be said about it. Of the societies now to be considered the oldest is the

LIBERTY AND PROPERTY DEFENCE LEAGUE,

founded in 1882 "for resisting over-legislation, for maintaining freedom of contract, and for advocating Individualism as opposed to Socialism, irrespective of

party politics." Its objects were more precisely defined as—

1. The defence of the principle of individual ownership and freedom of contract in property of all kinds.

2. The defence of private enterprise in agriculture, ships, railways, mines, manufactures (textiles, metal, and miscellaneous), professions, and trades (wholesale and retail) of all kinds from harassing State regulation and inspection.

3. The furtherance of the rights and freedom of labour by voluntary and direct adjustments between Trade Unions and employers.

4. The federation of all these industries in the mutual defence of their common liberties and rights of self-government against encroachments by the State.

In the first of the above clauses "property of all kinds" evidently means all property now recognised by the law of England, thus denying by implication our doctrine that a State is acting (ethically speaking) *ultra vires* when it purports to create absolute rights of individual ownership of land. Whatever "freedom of contract in property of all kinds" may mean, it cannot be supposed to mean enforcement by law of every kind of bargain that any individuals may choose to put their names to, that being a thing never yet attempted or proposed in any country; but the formula provides no criterion for distinguishing the agreements which ought, from those which ought not, to be legally enforced.

The same remark applies to "the defence of private enterprise from harassing State regulation and inspection." What kinds of regulation are deemed to be "harassing," and what salutary, we are left to find out from the action of the League in particular cases. In order to make the formula correspond with the undoubted intention of its framers, there should have been added, after "inspection," the words, "and from State competition." The omission was supplied in the statement of objects issued in 1888: "The League opposes all attempts to introduce the State *as competitor or regulator* into the various departments of social activity

and industry which would otherwise be spontaneously and adequately conducted by private enterprise." But here again the qualifying words at the end of the sentence leave open almost every practical problem that has since exercised the minds of our legislators. The following samples of measures successfully or unsuccessfully opposed will give a fair idea of the defensive (or as its enemies would say, obstructive) activity of the League during the twenty-seven years of its existence. In default of evidence to the contrary I have counted the action of its Chairman, the Earl of Wemyss, in the House of Lords as the action of the League.

Measures opposed in the Interest of Landowners.—The "Access to Mountains" Bill; a "hardy annual," originally promoted by Mr. (now Sir James) Bryce, which has not yet become law. It would require for its justification the acceptance of some such general principle as that the public have a right to roam where they please, unless their exclusion from any given area is necessary for the reasonable privacy of the owner, or for good husbandry, or for some other socially beneficial purpose. The present writer, as a believer in land nationalisation, would be quite prepared to lay down some such rule for the government department charged with the management of the land *when nationalised*—though even then there might be some room for doubt as to its application to grouse moors and deer forests. The question would be, whether it might not be more profitable for the community as a whole to obtain high rents from a few rich men for sporting rights involving some restriction on the freedom of tourists, than to sacrifice this source of revenue for the sake of keeping these barren mountains absolutely open without payment to the climbing and scenery-loving section of the public. But to maintain the principle of private ownership while whittling away, without compensation, one incident of ownership after another,

is much more difficult to justify ; and so far the cause of the Leaguers is ours also.

Leasehold enfranchisement was rightly and successfully opposed, as giving to the lessee something for which he had not bargained, at the expense of the landlord. And equally reasonable, though not equally successful, was the League's opposition to those clauses of the Agricultural Holdings Acts which purported to bar "contracting out."

Needless to say, the land clauses in the Budget of 1909 were opposed *en bloc*.

Measures opposed in the Interest of Employers of Labour.

—The League opposed (unsuccessfully, but as I think rightly) the Trades Board Bill, which became law in 1909, for the fixing of a compulsory minimum wage in certain "sweated industries"; also Mr. Joseph Chamberlain's Workmen's Compensation Act of 1897. And they claim credit for having contributed to the defeat of that unquestionably Socialistic measure, the Unemployed Workmen's Bill of 1909. Were they equally justified in their opposition to the Act of 1883, prohibiting payment of wages in public-houses, and to the clause in the Factories and Workshops Act, 1891, forbidding mothers to go out to work within four weeks of their confinement?

As to the first, the practice savours so strongly of conspiracy between employer and publican to induce the workman to spend his money foolishly at the moment of receiving it, as to make out an exceptionally strong case for departure from the general rule of freedom.

As to the second, the generally sound principle of allowing adults of either sex to work as and when they think fit, was here in conflict with the equally sound principle that the first duty of a mother is to look after her child, and especially her newly born child, and that the enforcement of this duty is well within the province of the State as the general protector of the helpless.

The opposition to this measure was therefore mistaken, if and so far as it went on the bare general principle of free labour. But the Legislature ought to have made this clear by leaving the employer out of the question, and treating it simply as a matter between parent and child ; and when so dealt with there would have been quite room for honest difference of opinion as to whether the infant's chance of life depended more on the mother's nursing or on her wage-earning.

Education.—The League did not venture to assail the principle of gratuitous and compulsory State-provided elementary education, as established before it came into existence, any more than it ventured to demand the disestablishment of the State Church ; but it resisted indiscriminately (and to my thinking illogically) every proposal for expansion of the system, whether in the way of teaching new subjects, or of extending the period of instruction, or of feeding and medically inspecting the scholars. (See on this subject Chapters IV. and V.)

State Competition with Private Enterprise.—The League rightly opposed “ free ” (*i.e.* rate-supported) public libraries. (For objections to these institutions, see Chapter VII.) But whether it was worth while to oppose a mere change of procedure by the Act of 1893, substituting a resolution of the urban authority for a plebiscite of the ratepayers as the method of putting the Act in force, is less certain. If charging the rates for such purposes is to be permitted at all, I see no reason why this any more than any other question of municipal expenditure should be taken out of the hands of the regular elected authority, which should be better able than the ratepayers to take a broad view of the financial position.

In their opposition to municipal housing and town-planning, and to all forms of municipal trading, the League went rather beyond the line drawn in this work.

Not content with saying that if there is to be competition between municipal and private enterprise it must be fair—in other words, that the rents or prices should be fixed on such a scale as to guard against any probable burden on the ratepayers, among whom the competing industrials are included, they practically took for granted that no municipally managed business would ever be successful under those conditions, and if they had had their way would have prevented any such scheme from being tried. And in the same spirit they took no account of the special grounds recognised by J. S. Mill and other economists for municipalising businesses which must from the nature of the case be somebody's monopoly, such as the supply of gas and water. Nor did they favour the alternative policy of State regulation, where that took the form of compelling companies invested by Parliament with special powers to do more for the public than their own interests would dictate, *e.g.* compelling railway companies to provide cheap trains for workmen. In our view the only rule which the State is bound to observe in dealing with privileged undertakings is that the conditions imposed must not be so onerous as to discourage the investment of capital in socially useful enterprises; within that limit it not only may, but should, make the best terms that it can for the general public.

Liquor Legislation.—The liquor traffic as now conducted may be defended against the coercionist temperance reformer from two different points of view: that of “the trade,” or that of the consumer. The League, being primarily a federation of threatened interests, would naturally lean towards the former, and seems to have done so in fact. The simple policy of free trade in intoxicants as in other commodities, qualified only by suitable laws against drunkenness and incitements to drunkenness, as advocated by Auberon Herbert and Mr. Levy, and favoured by the

present writer, never came within the range of practical politics during the existence of the League, and the League never troubled itself about anything that was not practical politics. Its efforts were therefore confined to opposing, with varying success, Local Option and Sunday Closing Bills, and the like, and (of course) the Liberal Licensing Bill of 1908, which it helped to defeat in the House of Lords, and the licensing clauses of the Budget of 1909. The League did, however, depart for once from its usual negative attitude by officially supporting a small and harmless "Public-Houses Improvement Bill," intended to facilitate such alterations and extensions of licensed premises as would tend to make them more attractive to sober people seeking rest and recreation, without increasing the consumption of intoxicants. It passed the House of Lords once, but was not proceeded with in the Commons; and this year (1911) it did not even attain to a second reading in the Lords.

Where the issue was one of personal liberty simply, unconnected with either trade interests or land or capital, the League was not much in evidence. I find that it concurred with the Personal Rights Association in opposing (unsuccessfully) the compulsory notification of diseases, but that it took the opposite side on the difficult question of vivisection, championing the liberty of research as against the rights of animals. I do not find that it had any share in the repeal of the Contagious Diseases Acts, which was effected in 1886,¹ nor in the still unfinished struggle against compulsory vaccination. Its chairman, the Earl of Wemyss, has been from first to last a persistent advocate of compulsory and universal military training, which was shown in Chapter I. to be a most unnecessary and oppressive invasion of personal

¹ Rather the contrary, inasmuch as its chairman, then Lord Elcho, voted in the House of Commons against the Repeal Resolution of 1883.

liberty. But it seems to have been always understood that members reserved to themselves full liberty to support in their individual capacity any particular piece of constructive legislation that might happen to commend itself to them, even if officially opposed by the League.

After the death (1894) of this League's first secretary, Mr. H. C. Crofts, it became increasingly manifest that the priority assigned to liberty over property in its title was habitually reversed in its practice ; but this could not be said of the

FREEDOM OF LABOUR DEFENCE LEAGUE,

which took for its special field of activity resistance to the attempts, constantly made on one pretext or another, to restrict the wage-earning opportunities of women. With regard to their propaganda, I can only repeat that I am entirely with them in denying the right of the State to interfere with the discretion of adult women *simply as such*, as to what tasks they should undertake, and what risks they should run ; but that in dealing with *mothers* the State must not shirk the responsibility of deciding whether wage-earning under specified conditions is or is not so manifestly incompatible with their parental duties that it must be prohibited in the interest of the children. In determining this question it would in my Utopia be most important to remember that the only alternatives open to parents unable to satisfy the minimum requirements of the State would be either to hand over their children unreservedly and irrevocably into the guardianship of the State, while retaining their own freedom on the footing of childless adults, or else to place both themselves and their children under full State control. Inasmuch as it could never be sound policy for the State to burden itself in this way with any large proportion of the population, it would be ex-

ceeding its duty were it to set up a generally unattainable standard of parental care, or to presume neglect of maternal functions from the mere fact of wage-earning, unless the incompatibility were obvious and insurmountable. The generally proper course would be to take no action except upon proof that parental duties were actually being neglected, and then to take action against the individual defaulter, irrespective of whether the default was due to wage-earning or to any other cause. As things actually are, with the public relief of destitution governed by no intelligible principle, and with the care of all children of the wage-earning class taken very largely out of the hands of their parents, there is still more need and justification for a Freedom of Labour Defence Association.

THE BRITISH CONSTITUTION ASSOCIATION.

Since 1903 the Liberty and Property Defence League has been overshadowed, if not superseded, by a more ambitious organisation with the above amazingly inappropriate title. Whether there is now, or ever has been, anything which could properly be described as the British Constitution, is a question of words which it would be unprofitable to discuss, but the compound of statute law and precedent to which the term is commonly applied is a compound relating primarily to the structure, or "constitution," of the governing body; only in a very secondary and indirect way to the so-called "liberty of the subject," and to the limits of State interference. To the ordinary reader the title would suggest an association for maintaining the present composition and powers of the two Houses of Parliament, and the regular devolution of a limited Kingship under the conditions defined by the Act of Settlement. But even when it has been explained to us that the object is "to conserve the fundamental

principle of the British Constitution,—personal liberty and personal responsibility,—and to limit the functions of governing bodies accordingly,” and when we have agreed not to cavil as to whether such a principle, supposing it established, could properly be described as constitutional, we are still puzzled, as students of English history, to discover how, when, or by whom any such general principle limiting the functions of governing bodies was established. There is hardly any conceivable form of restraint on personal liberty that English law has not at some time or other sanctioned. The further we go back into history, the more restricted and ill-protected do we find the liberty of the individual, until we reach the period when actual serfdom was the lot of the majority. If evidence were needed on this point, the very first witness I should call would be a once prominent member of the Liberty and Property Defence League, who edited in the later eighties a journal called *Jus*. In that journal he kept going for some time a special column for specimens of “Early English Legislation,” and summed up their general character as follows, in an essay published under the auspices of the League :—

“If we take English Constitutional History as the subject of our examination, we shall find that, so far from being on the increase, State interference with individual liberty has been a constantly diminishing quantity. We have but to cast our eyes down the statutes of the Plantagenet period to discover in what numberless private concerns the State intruded, with which no modern government would dream of intermeddling. The price of corn, the wages of labourers, the importation of coin, the rate of interest on loans, the manufacture of beer, attendance at divine service, and a thousand other matters, were carefully supervised by the State. . . . A statute of Henry VII. goes so far as to prohibit the use of machinery in the manufacture of broadcloth—a law which drove a good deal of the woollen trade to Holland, where the ‘divers devilish contrivances’ were no bar.”

Had Mr. Donisthorpe been writing in 1911 instead of 1885, he would have thought twice before asserting that no Government would now dream of intermeddling with

the wages of labourers or the rate of interest on loans, having regard to the Money-Lending Act of 1900 and the Trade Boards Act of 1909. But he would still have been safe in denying generally that the cause of personal liberty has anything to gain by appealing from the present to any period of the past. The best that can be said for the British Constitution, taking that term in its loosest but only relevant sense, is that the practice of our legislators and administrators at most periods of our history was on the whole less meddlesome than that of the great continental monarchies of the seventeenth and eighteenth centuries ; and that assuredly is not saying much. In a community governed by logic, and accustomed to expect conformity between a label and the article described, one would confidently affirm that a society weighted with such a name was foredoomed to sterility and futility ; but in England it would be rash to prophesy failure on any such ground. Englishmen being what they are, few of them will see anything odd in a " British Constitution Association " attacking one after another our most characteristically British institutions. Its President, Mr. Harold Cox, began well from this point of view by demanding the abolition of our system of party government, which is equivalent to demanding a brand - new constitution. Another distinguished member, Professor Flinders Petrie, has advocated the abolition of our two-chambered system, not in favour of a single chamber, but in order to substitute a wholly new four-chamber system, fancifully assimilated to a short-lived experiment of Edward I. The Association has now (since December 1910) committed itself to the principle of the Referendum, which, whether good or bad in itself, is quite as alien to the spirit of the existing constitution as the total abolition of the House of Lords. Be that as it may, our concern is not so much with the views of the British Constitution Association as to the structure of the State as with the

manner in which they propose to limit its functions. So far as it has gone at present, the following are the most noteworthy indications of its spirit :—

Negatively.—It has not touched the question of compulsory vaccination, nor that of compulsory notification of disease, nor any of the other forms of alleged medical tyranny to which the Personal Rights Association devotes the greatest part of its attention. It has been silent on the question of Church Disestablishment, and has spoken with an uncertain voice as to the limits of State interference with education. Dr. Sibly has been allowed to plead the cause of private enterprise as against municipal secondary education, and a leaflet by another member deals (adversely) with the State feeding of children ; but there has not been, so far, any direct attack on the principle of compulsory and gratuitous elementary education ; and one member, Sir Philip Magnus, speaking at the dinner to Mr. Harold Cox, “ urged that individualism should not be carried out in too uncompromising a manner. While he deprecated much of the recent legislative interference with industry, he attached great value to what the State might do in education.” Nor has the Association entered any protest against the shop hours legislation so persistently promoted by Lord Avebury, nor against the compulsory military training with which we are threatened by the National Service League.

Positively.—They have opposed through Lord Avebury all proposed extensions of municipal trading. They have declared unmistakably against State-paid old age pensions, and have not as a body given any support to the alternative proposal of compulsory insurance, though this appears to be favoured by some of their members, and notably by their President, Mr. Harold Cox. They have also, through Sir William Chance, opposed the “ break-up of the Poor Law,” as advocated in the Minority Report of the late Commission, taking

their stand on the principles of the Act of 1834 rather than on the alternative scheme of the majority Report.

They opposed the State feeding of children, apparently without perceiving that it follows inevitably from the principle of State education.

They opposed municipal billiards, as provided by the Battersea Borough Council in 1906, as though this were any worse than the provision of municipal novel-reading under the Free Libraries Acts. On the land question the Association seems to be identified for the present with the attitude of its President, which is that of uncompromising opposition both to nationalisation and to all special taxation of land.

The general result is that the British Association does not, any more than its forerunner, the Liberty and Property Defence League, help much towards a reasoned delimitation of the province of the State. Both are mere federations of threatened interests which happen to have been favoured hitherto by a state of the law which somebody is proposing to change; whereas the statesman has to take account also of the interests to which the present state of the law is unfavourable. "*Nolumus leges Angliæ mutari*" might be a comfortable doctrine for the barons who enunciated it; not so for the disinherited bastard whose case was the immediate occasion of the pronouncement, nor for the villein, nor for the townsman tallageable at the will of the lord. The laws of England have been changed beyond recognition since that veto of the old barons, and less than ever are such phrases as "British Constitution" spells to conjure with in this twentieth century.

Those who have accepted our postulate that the State is an institution worthy of support just in so far as it answers to the description of a justice-enforcing association, and who have followed our exposition of

all that this description involves, will probably agree that changes scarcely less radical than those advocated by the Marxian Collectivists, though for the most part in the opposite direction, are required in order to bring the relations between the State and the individual into conformity with our ideal. The Libertarian, like the Collectivist, may be either "Fabian" and opportunist, or impatient and revolutionary, in his methods of promoting the required changes; but the attitude of mere resistance to further change, or of willingness to rest finally content with small and superficial changes, is impossible for him who has once grasped the principles of either system. According to our theory at all events, the State is doing much more in some directions, and much less in other directions, than it ought to do; and the purpose of this work will have been served if it helps in any degree towards the discovery of a workable test by which to estimate excess and defect.

THE CENTRE PARTY UNION.

This appears to be identical with a pre-existing "Middle-Class Defence Association," which claims to have saved many thousands of pounds to the rate-payers of England by opposing municipal trading and extravagance. How this may be I do not know, but their new title, read in connection with their two mottoes, suggests anything but a clearly conceived policy for the future. If principles are to come before party, why add yet another party to those already in being? And what principles are meant to be indicated by the strangely assorted pair of "I"s, Individualism and Imperialism? Except the initial letter and the last syllable, what have these two watch-words in common? If Individualism is to be taken in its usual sense, it means (as Lord Bramwell once

put it), "Please govern me as little as possible." If Imperialism is to retain any sort of connection with its origin and its history, it ought to mean, "Please govern me as much as possible, and make up to me for the loss of liberty at home by sending me, or the likes of me, to play the master over the largest possible number of brown and black men abroad." I suspect that a good many of these Individualist-Imperialists do mean that, though Mr. Harold Cox, who appears in the list of their General Council, must have changed very much of late if he means anything of the kind.

The platform of the new Centre Party Union, as shown in their circular, has two planks only : (1) direct taxation extended to the working classes, and (2) a Second Chamber, "with power in case of need to refer every kind of proposed legislation to the decision of the people." The first would be a very just and reasonable proposal, if it were accompanied by the abolition of the indirect taxes which now bear very hardly, though less obviously, on people of small means, and if a method could be devised of collecting minute sums from weekly wage-earners without violating Adam Smith's third and fourth canons of taxation—in other words, if they could be collected at the time most convenient to the taxpayer, that is, every Saturday, and if this could be done without making the cost of collection excessive in proportion to the net amount realised. These are very large Ifs. I am not in the least prepared to assert that the problem is insoluble, but it remains to be seen whether the Centre Party Union will in any way help towards its solution. It is not clear whether the second proposal points to a Referendum. If it does, it may be good or bad, but is decidedly revolutionary. If it does not, it involves a very gross, though unfortunately a very common, misunderstanding of the nature of a general election. Our present Constitution knows nothing of any power to refer any

specific legislative proposal to the people; and in practice the bulk of the electors never do vote with exclusive reference to a single issue.

THE ANTI-SOCIALIST UNION,

of which we began to hear in 1908-9, does not seem to differ very markedly from the old "Liberty and Property Defence League,"¹ except that the formidable development of thoroughgoing Marxian Socialism since 1882 has provided the defenders of property with a bigger target to fire at, and has naturally suggested a new title. Its monthly organ, *Liberty*, with its long list of pamphlets and leaflets, and notices of lectures and speakers, indicates considerable activity, but just because it is an "Anti-," it has little or no interest for us. What is wanted to make a new party worth joining, is not mere resistance to certain extremists, but some positive and fruitful conception of the proper sphere of government.

While we are waiting for this want to be supplied, those who aspire to play an active and useful part in practical present-day politics will do well to make the best of party government as it is; to choose their party with reference to what they feel to be their deepest and most abiding affinities, not to change it for any superficial disagreement, and to endeavour to permeate it with their own special convictions within the limits of party loyalty. The ordinary citizen, for whom politics may, quite rightly, have only a subordinate interest, limited perhaps to watching the game through the medium of the newspapers and giving a conscientious

¹ The Secretary of the L.P.D., however, claims in *The Times* of March 31, 1911, that it is still doing work untouched by the newer society, (a) as a federation of threatened trades and interests, and (b) as helping individual sufferers by trade union tyranny.

vote at elections, is not in the least required by any sane theory of party government to join any party organisation or allow himself to be ticketed; indeed, it is distinctly to the public advantage that the unpledged electors should greatly preponderate numerically over the pledged. With the sphere of government limited as here recommended, this preponderance of impartial outsiders would be much easier to maintain than it is now, and it is more practicable now than it is likely to be some years hence if the present tendencies continue; but its maintenance will in no way be assisted by breaking up the two-party system itself, which now gives to the unpledged elector the choice between two competing groups of tried statesmen, each ready to assume the reins of government on the dismissal of the other.

CHAPTER XVII.

CONCLUDING REMARKS.

IN bringing my task to a close, I shall probably be consulting the convenience, as well of the reader who has followed me throughout, as of the less patient person who looks first to the end of a book in order to form a summary judgment as to its drift and value, by calling attention to the points in which I have felt compelled to diverge most markedly from the prevailing opinions, and which happen also to be the points to which I myself attach the greatest importance as tests of the general soundness of the working hypothesis which I set out to verify.

Chief among these is the subject treated in Chapters IV. and V. If the general opinion is correct, that it is necessary to the well-being of the community that the State should provide, out of compulsorily levied rates or taxes, instruction wholly or in part gratuitous, and wholly or in part compulsory, for the whole, or the greater part, of the juvenile population, then there is an end of my theory, which was to the effect that the only valid reason for maintaining a State, or in other words for entrusting any set of people with a monopoly of public force, was the certainty of continual strife and generally triumphant injustice if every man were to be judge in his own cause. It was shown that a very large part of the ordinary functions of modern governments were explainable as either necessary or highly conducive to this object, even where they might seem

at first sight rather remote from it ; and it was claimed that all the functions not so explainable were in fact unnecessary, being such as could (so far as beneficial) have been discharged as well or better by agencies free from the taint of coercion. I had to admit that education of the masses (as distinct from that of a small residuum for whom the State might be compelled to stand in the place of the parent or private guardian) belonged decidedly to the latter class. The only argument connecting such education with the prevention of crime was found on examination to be unsustainable ; whence it followed, if my theory was to stand, that even the earliest and most limited of our Education Acts must be pronounced to have been a step in the wrong direction, still more the present annual expenditure of thirty millions of rates and taxes on primary, secondary, and higher education.

This will probably be regarded by many people as the most heretical opinion in the book. It is an opinion that I have held with increasing conviction for the last forty years, as the consequences which I anticipated in 1870 gradually unfolded themselves. It is not that I have shut my eyes to the good work done by the now defunct Schools Board and by the new County Council Education Committees, or that I have listened with too eager credence to the many hard things said of them by their detractors. I never doubted that much good must result from the steadily growing public interest in popular education, into whatever channel that new zeal might happen to be directed. But I expected from the first, and my expectation has been only too amply fulfilled, that together with this good would come evil of the gravest kind, which might have been avoided had all this energy been directed at the critical moment into the right channel instead of the wrong ; into the channel of voluntary and therefore varied enterprise, instead of the channel of enforced uniformity.

When I am told that I have against me the opinion and practice, not of this country only, but of all our self-governing colonies and of all other civilised nations, both great and small, I am less impressed than I should otherwise be, because I find that the apparently world-wide agreement as to the utility of State education goes with an equally widespread disagreement as to what that education should be—a disagreement not merely in accidents but in essentials, and going so deep as to produce almost everywhere a bitter sense of injustice, sometimes verging on rebellion. In England the passive resister is still with us, and Minister after Minister, first of one political party and then of the other, has come out of the Education Office with damaged reputation, through no fault of his own, but owing to the inherent insolubility of the problem. In Ireland we read of State schools contemptuously neglected and starved by the locally elected authorities, and only preserved from extinction by lavish use of the power and wealth of an alien Government. In France, as in Ireland, the continuance of State-provided education has in great measure frustrated the healing influence to be expected from the separation of Church and State ; and we read of fierce debate as to whether the name of God shall or shall not be forbidden to be used in schools paid for by Catholics and freethinkers alike. In the new South African Union the language question in the schools seems to be the chief remaining bone of contention between the two dominant white races, after having given rise to not the least provocative of the various disputes which collectively brought on the great Boer War. I do not know, but cannot help suspecting, that there, as in America, the colour-line in Government schools is going to give at least equal trouble in a not distant future.

The same tale of incessant bitterness and unrest, from the same cause, comes to us from Prussian Poland, from more than one province of Turkey, from

Egypt, from British India. If ever there was fit occasion for Lord Melbourne's famous question, "Can't you let it alone?" it would seem to be this; but no one thinks of asking it, presumably because of the enormous vested interests that would be affected by an affirmative answer. In a theoretical work of this kind, the difficulty, even the impossibility, of reversing a policy which seems to us mistaken and mischievous is no reason for reticence. Even if it be certain that the time has gone by, or that the day has not yet dawned, for an advance in the direction of the liberation of education from State patronage and control; even if no way can be pointed out—though I myself believe that there is a way—by which the nation could, if theoretically convinced, effect the transition from coercionism to voluntarism without intolerable disturbance of vested interests or waste of resources, it may still be well worth while to make the true state of the case known to all who care to know, in order that they may adjust their plans to the real situation, discover palliatives for what they cannot cure, and turn their energies in more hopeful directions.

If it is true, as I think it is, that the proper and indispensable work of government is now being carried on under the heavy disadvantage of an ever-growing financial drain for extraneous objects, of a vast unnecessary enlargement of the area of political strife, of the political muzzling of a large proportion of our best-educated citizens, and of the lack of that rich variety of character and talent which is the fruit of free experiment in education, and one of the most valuable assets that a nation can possess, much is gained by knowing the worst. We shall cease to expect impossibilities from a Government so hampered; we shall sympathise with a Chancellor of the Exchequer devising new expedients for taxing the rich rather than throw the burden of "educating our masters"

on the poor, who are forced to submit to the process, and for whom much of what is so forced upon them is unsuitable. If we have the good fortune to be independent, we shall work all the more strenuously for the politics in which we believe, when we think of the vast army of politically muzzled State teachers whose help is denied to us. We shall perhaps, while not in the least believing in secular education as an ideal, favour that solution of the "religious difficulty" as a makeshift, in order to rescue at least one great human interest from the cramping touch of officialism, and in order to provide some scope, however limited, for the energies of the unofficial teacher. We may also, in view of the financial pressure due to this drain, have to recognise, however reluctantly, that in the present temper of the nation it is necessary to economise in essentials in order to provide for superfluities, and concentrate our efforts on a few small reforms in the sphere of judicial administration, instead of pressing our full demand for free justice.

And this leads me to the topic which in my view stands second in order of importance—the failure of the modern State to fulfil adequately its primary function. When I say the modern State, I by no means intend to imply that things were better in this respect at any former period. In this country, at all events, as we trace its history backwards from the present time, we find the Government at each stage less and less like a justice association, and more like an assemblage of persons determining their mutual relations by successive trials of strength, the stronger selling to the weaker personal protection in return for personal support, from the King down to the pettiest lord of the manor, and establishing courts of justice as their instruments for realising the profits of this protective function. It is true that the ecclesiastical power, which for so many centuries divided with the lay authorities

the functions that now belong to the unified State, professed a less self-regarding, though hardly a more social aim ; but in practice fee-gathering was the chief aim associated with jurisdiction in both organisations, and the ultimate end of fee-gathering was increase of power to the King, or to the Church, as the case might be, as against rival aspirants to dominion, rather than the more perfect redressing of wrongs.

With the increase of State-consciousness and of the sense of solidarity among our people, justice has now become much purer, and may even be called cheap and certain, as compared with what it was down to the middle of the last century ; while the police, from being alternately the terror and the laughing-stock of the public, have come more and more to be regarded as the friends of everybody except the criminal. But the possibilities of further improvement are immense, and my complaint is that they receive far too little attention by comparison with other matters which politicians might very well let alone, or which should at best be only subordinate items in their programme. We are still too apt to think of justice as Napoleon thought of war, as a business which ought to support itself, though we have ceased to expect, like our forefathers, that it shall also bring in a substantial profit to the Treasury ; whereas reason ought to teach us that justice can never be really such unless it is gratuitous so far as innocent parties are concerned ; that the first charge on the property of the wrong-doer should always be full compensation to the person injured, if any ; and that wrong-doers who can afford to pay anything considerable besides this to the community, without suffering punishment in excess of their deserts, will always be too few to help much towards defraying the cost of an efficient system of justice and police.

We spend millions on inspectors of various kinds, in order to enforce the ever-growing mass of sanitary

and other regulations, and we are assured that they are still far too few to do the work properly ; whereas many of these regulations would enforce themselves automatically if we had everywhere gratuitous tribunals ready to award damages to the actual sufferers on their own complaint. Gratuitous civil justice is far from being the only extension, or rather intensification, of State activity in this its primary sphere which our theory demands ; but I deem it on the whole the most important, as well as the most novel. This and other urgent law reforms would involve, no doubt, a considerable increase of expenditure, though small in comparison with what our theory would cut off.

Thirdly, I would ask special attention to the view here taken of the proper function of the State in relation to the land. The argument is that the proper enforcement of justice as between the individual and the community is impossible unless the State constitutes itself trustee of all ownerless things ; that all land comes under that description unless it has been legitimately appropriated ; that according to the true view of the moral basis of property there is no valid original title except creative labour ; that labour is only creative in the sense of improving the raw material provided by nature ; consequently that legitimate appropriation can only apply to the value added by human improvement, leaving still ownerless the separate value, if any, of the raw material ; that the value of land as raw material (or as space for habitation and locomotion) depends on the relation between supply and demand, and is sometimes infinitesimal or even negative, but that on the very same land in altered circumstances the unearned value may reach a very high figure indeed as compared with the earned ; and that therefore the improver, who may rightly have been allowed by the community to occupy and enclose land in the first instance, may no less rightly be called upon at some future time to surrender or pay

rent for that same land on having the value of his improvements secured to him.

The policy to which this argument leads up—in other words, the policy of land nationalisation in one or other of its forms—is no doubt an extension of State interference beyond the limits traced by the existing English law. But it rests, as we have seen, on a ground of its own, is, in fact, an outcome of Spencerian Individualism, and involves no approval whatsoever of the Collectivist demand for the nationalisation of all the means of production. Nor does it at all necessarily imply any extension of officialism. The land said to be nationalised need not, and as a rule should not, be directly managed by the State, and the income received in the shape of rent should be balanced by a corresponding reduction of rates and taxes.

Incidentally, the proposal to apply this principle to an old country in which private landowning has long been recognised raises another question connected with the province of the State, namely, as to the moral competence of its representatives for the time being to bind their successors *ad infinitum* by their grants and contracts ; or, putting it the other way, as to the competence of Parliament to repudiate the obligations contracted by a former Parliament—a question considered in Chapter XV.

My treatment of the land question differs from that of the Land Nationalisation Society (of which, however, I am a member), and also from that of the memorable Budget of 1909, because the procedure by way of taxation seems to me to confuse the moral issue, with which alone this book is properly concerned. It was not my business to consider whether, as a question of parliamentary tactics, some rougher approximation to strict justice might have a better chance of acceptance in the present state of parties. Resumption of the indefeasible rights of the community, with due but not excessive regard

for vested interests,—preferably in the form of a time limit,—seems to me the only policy of which the justice is apparent on the face of it. Special taxation of land-owners, and of a particular kind of unearned increment, does not carry with it this appearance, though it may quite possibly, in a roundabout way and under a misleading name, bring about nearly as equitable a result.

Lastly, the duty of the State to relieve destitution is put on a much narrower ground than is usual with philanthropic, even if anti-socialist, politicians. The employment of taxation as an instrument for redressing inequalities of wealth is expressly condemned (Chap. XI.). Charity is clearly distinguished from justice,¹ and the former is regarded as out of place in an organisation existing for the specific object of promoting the latter. Compulsory charity is, in fact, a contradiction in terms. But, on the other hand, the necessity is recognised for a justice association to find some way of protecting the baker's shop from the starving man without treating the latter as a fit subject of punishment; and it is suggested, as the only practicable method of doing this, that he should be offered the alternative of placing himself entirely at the disposal of the State, without the liberty at present accorded to paupers of taking their discharge on very short notice at their own discretion, but, on the contrary, subject to detention at the discretion of the authorities for whatever time, and under whatever conditions as to compulsory labour and training, may be thought desirable in the interest of the community. This new interpretation of the "principles of 1834" will seem to some even harsher than the old one, which has now fallen into some discredit; but I have endeavoured to show that it need not be so if properly

¹ I am truly sorry to find that I shall bring myself here under the anathema of Mr. Hobson, who denounces this distinction as "a pestilent falsehood"; but I cannot help it. To me it is a truth both self-evident and vital.

worked, and at all events I have failed to discover, in the two Reports of the late Poor Law Commission or elsewhere, any scheme which better satisfies my sense of justice and my conception of the proper sphere of government.

The above are, I think, the most important instances in which acceptance of my theory involves a condemnation of existing law and practice. Minor divergences are fairly numerous, but I hope not so much so as to give the impression, which is certainly not intended, that the whole trend of modern legislation has been wrong, and that the country is going fast downhill. I believe no such thing; but I do believe that immense possibilities of further national progress, both moral and material, are now open to us, which will be largely missed unless something is done to check the growing superstition as to the moral omnicompetence of the State, to relieve it of certain tasks which it has too rashly undertaken, and so to improve its structure as to render it more effective in that sphere of activity which must in any case be reserved to it.

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